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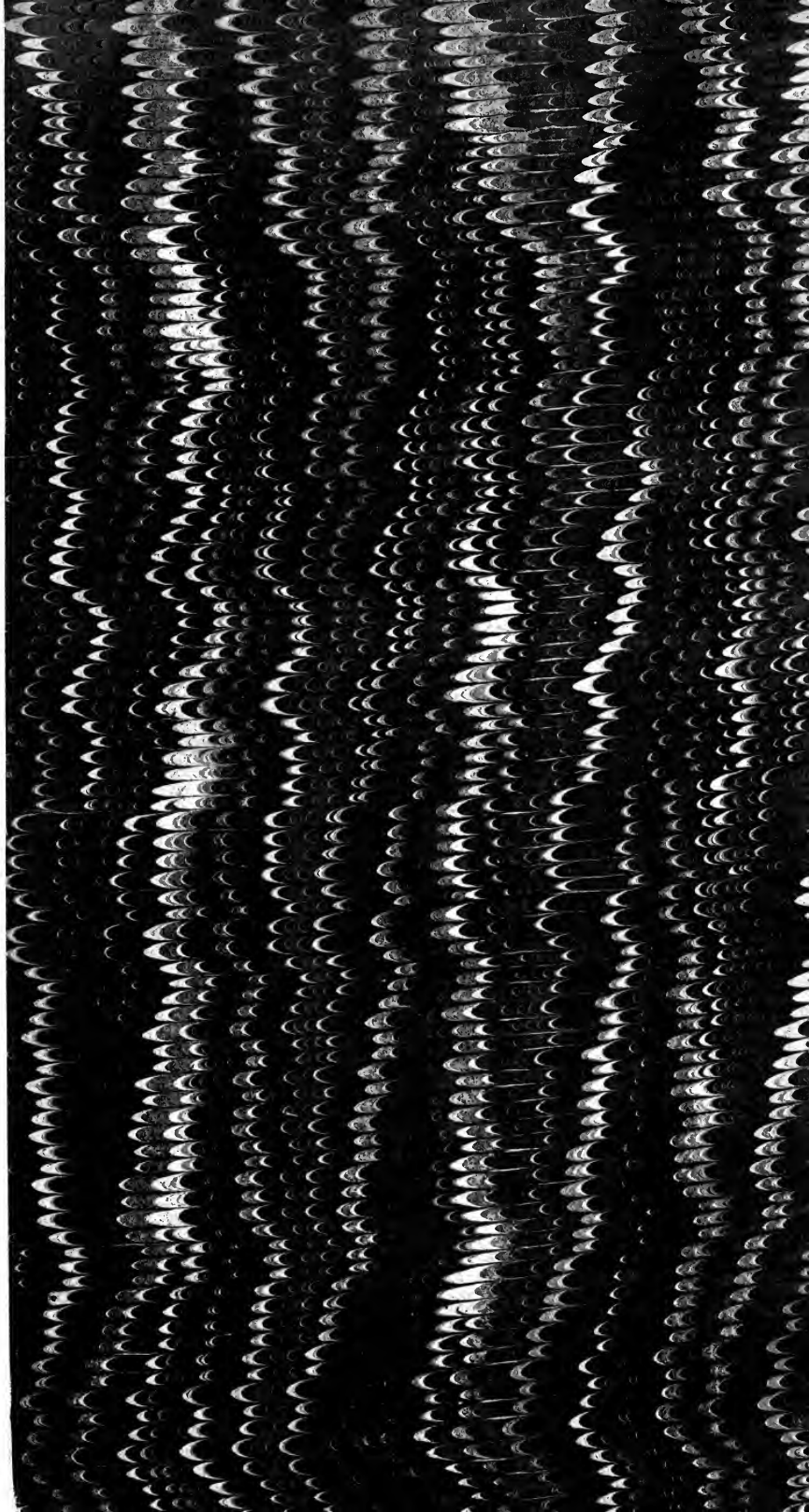
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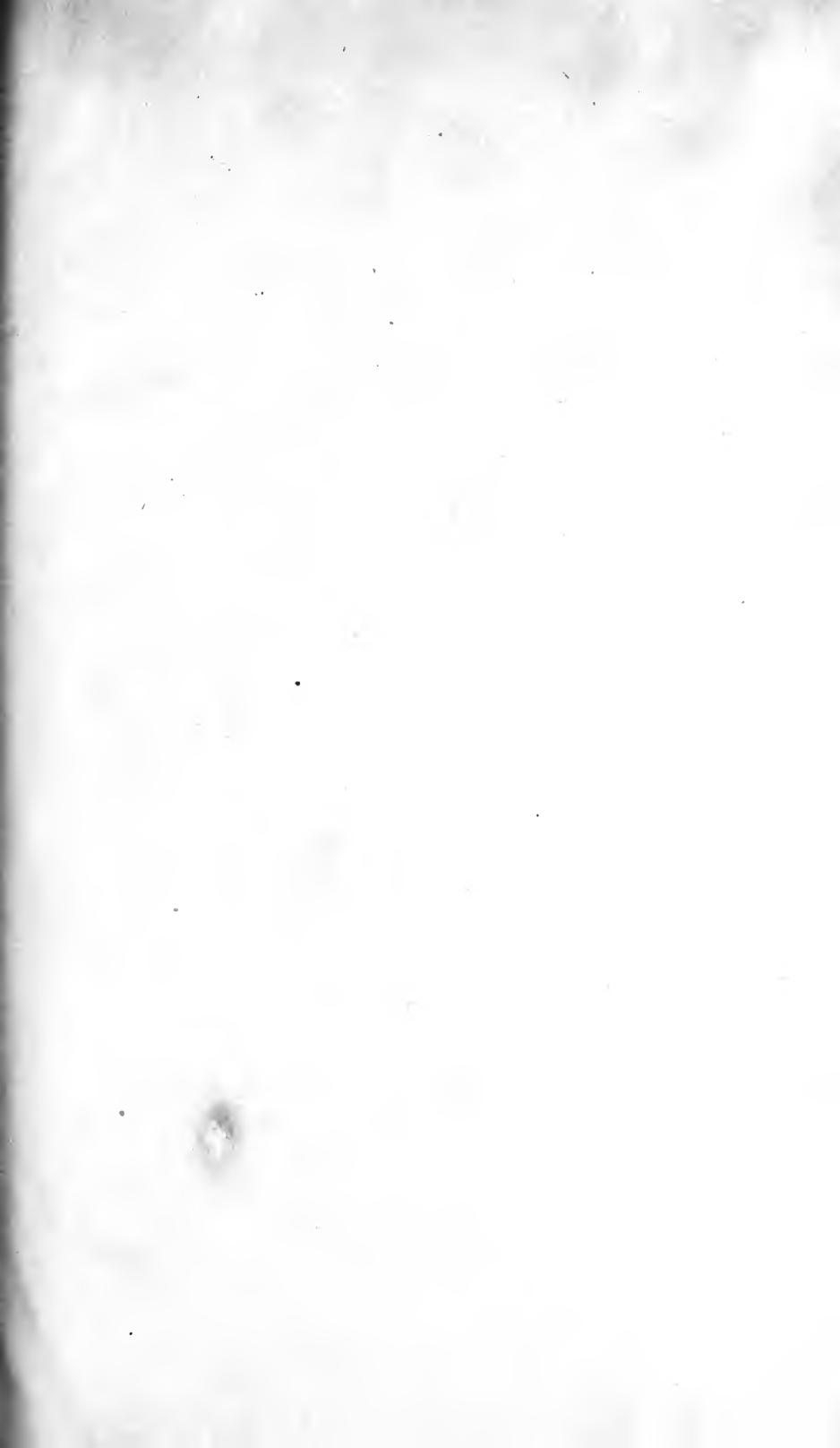
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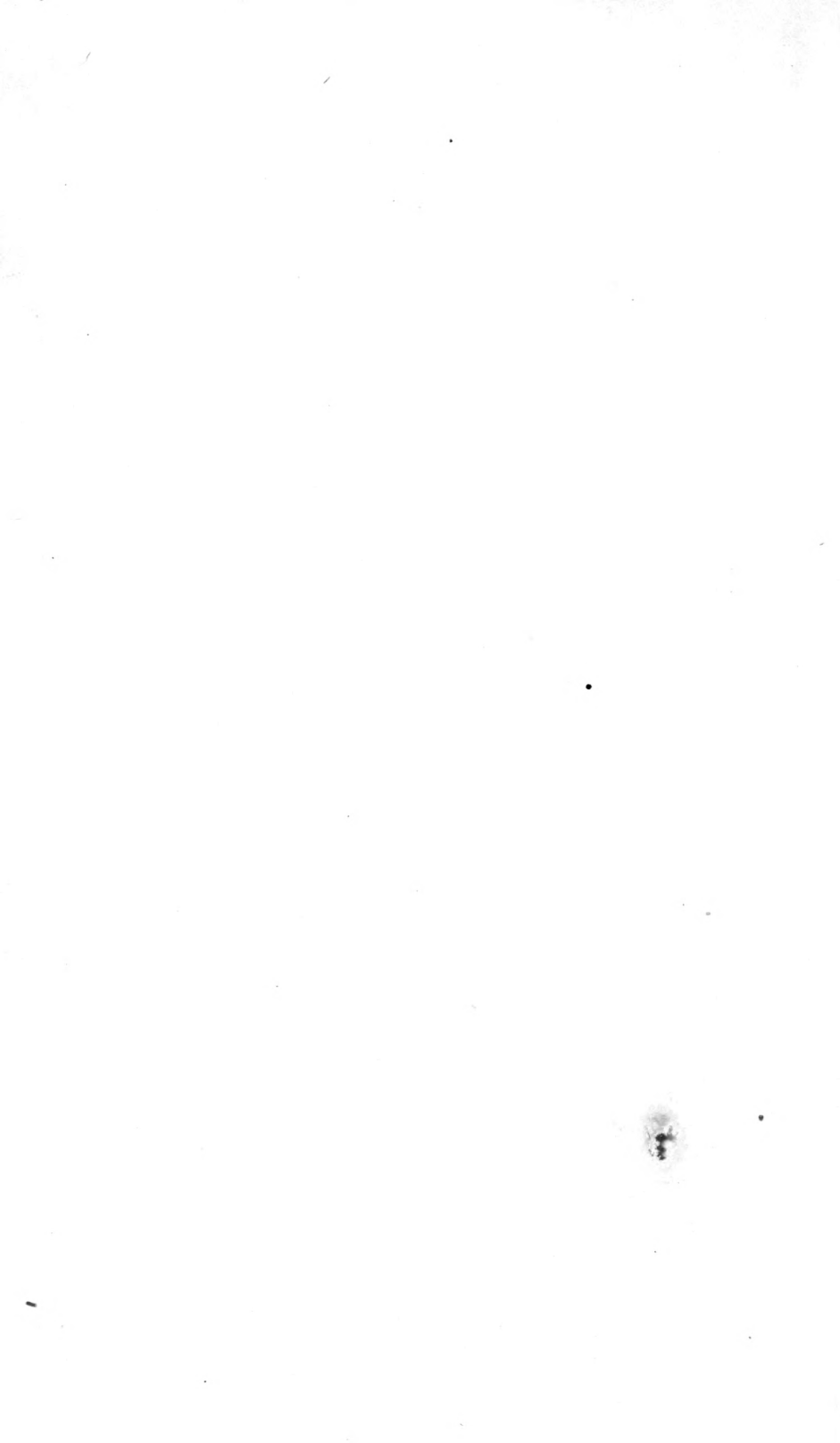
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THE  
MILITARY LAWS

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UNITED STATES.

*U.S. Laws, statutes, etc.*  
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Prepared, under the direction of the Honorable Daniel S. Lamont, Secretary of War,  
by Lieutenant-Colonel George B. Davis, Deputy Judge-Advocate-  
General, United States Army.



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## CHAPTER I.

### THE EXECUTIVE.

Par.

1. The Executive power.
2. Power of the President as Commander in Chief. The Cabinet. The pardoning power.

Par.

3. Term of office.
4. Treaty making power. Appointing power.

1. The executive power<sup>1</sup> shall be vested in a President of the United States of America. He shall hold his office during the term of four years. \* \* \* *Constitution, Art. II, sec. 1.*

The executive power. Constitution, Art. II, sec. 1.

2. The President shall be Commander in Chief of the Army and Navy of the United States and of the militia of the several States, when called into the actual service of the United States,<sup>2</sup> he may require the opinion, in writing, of the principal officer in each of the Executive Departments upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States,

Power of the President as Commander-in-Chief. Sec. 2, *ibid.*

The Cabinet.

The pardoning power.

<sup>1</sup>*The executive power.*—The executive power is vested in a President, and, as far as his powers are derived from the Constitution, he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power. *Kendall v. U. S.*, 12 Pet., 524, 610; *Marbury v. Madison*, 1 Cranch, 137, 166.

*Execution of the laws.*—The President is required to see that the laws are faithfully executed, but he is not obliged to execute them himself. 4 Opin. Att. Gen., 515; *Williams v. U. S.*, 12 Pet., 524, 610. The President speaks and acts through the heads of the several Departments in relation to subjects which appertain to their respective duties. *Wilcox v. Jackson*, 13 Pet., 498, 513; *Wolsey v. Chapman*, 101 U. S., 755; *Runkle v. U. S.*, 122 U. S., 543, 557. As a general rule, the direction of the President is presumed in all instructions and orders issuing from the competent Department. 7 Opin. Att. Gen., 453. In a matter which the law confides to the pure discretion of the Executive, the decision of the President, or proper head of Department, on any question of fact involved is conclusive, and is not subject to review by any other authority in the United States. 6 Opin. Att. Gen., 226. *Marbury v. Madison*, 1 Cr., 137, 166.

<sup>2</sup>*Powers as Commander in Chief.*—As Commander in Chief he is authorized to direct the movements of the land and naval forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy. He may invade the hostile country and subject it to the sovereignty and authority of the United States. But his conquests do not enlarge the boundaries of this Union, nor extend the operations of our institutions and laws beyond the limits before assigned to them by the legislative power. *Fleming v. Page*, 9 How., 603, 615. The power of command and control reserved by the Crown was placed by the Constitution in the hands of the President. *Street v. U. S.*, 24 C. Cls. R., 230, 25, *ibid.*, 515, 113 U. S., 299.

*Power to establish rules and regulations.*—The power of the Executive to establish rules and regulations for the government of the Army is undoubted; \* \* \* The power to establish implies, necessarily, the power to modify or repeal, or to create anew. *U. S. v. Eliason*, 16 Pet., 291, 301. The Army Regulations, when sanctioned by the President, has the force of law because it is done by him by the authority of law. *U. S. v. Freeman*, 3 How., 556, 567.

*May form military governments in occupied territory.*—As an incident of the exercise of belligerent rights, the President may form military and civil govern-

except in cases of impeachment.<sup>1</sup> *Constitution, Art. II, sec. 2.*

Term of office.  
Sec. 152, R. S.

3. The term of four years for which a President and Vice-President shall be elected shall in all cases commence on the 4th day of March next succeeding the day on which the votes of the electors have been given.

Treaty making  
power.

4. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate,

Appointing  
power.

ments in the territory of the enemy occupied by the armies of the United States. *Cross v. Harrison*, 16 How., 164, 190, 193. *The Grapeshot*, 9 Wall., 129, 132. He may also institute temporary governments within insurgent districts occupied by the national forces. *Texas v. White*, 7 Wall., 700, 730.

*May establish courts in occupied territory—Limitation.*—The courts established or sanctioned in Mexico, during the war, by the commanders of the United States forces, were nothing more than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property, while it was occupied by the American armies. They were subject to the military power, and their decisions were under its control whenever the commanding officer thought proper to interfere. Neither the President nor any military officer can establish a court in a conquered country, and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations. *Jecker v. Montgomery*, 13 How., 498, 515. *The Grapeshot*, 9 Wall., 129, 132.

For authority to employ secret agents in time of war, see *Totten v. U. S.*, 92 U. S., 105, 107. For powers and duties of the Executive in connection with the Army, the Militia, and the Army Regulations, etc., see the chapters so entitled.

*The pardoning power.*—A pardon is an act of grace proceeding from the power intrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate, delivered to the individual for whose benefit it is intended, and not communicated officially to the court. *U. S. v. Wilson*, 7 Pet. 150, 161. *Coke*, 3d Inst. 233. The power which the Constitution confers upon the President to grant pardons can not be controlled or limited, in any manner, by Congress. *Ex parte Garland*, 4 Wall., 333, 380; *U. S. v. Klein*, 13 Wall., 128, 147; 4 Opin. Att. Gen., 458.

*Delivery and acceptance.*—The pardon is a private though official act. It is official in that it is the act of the Executive; it is private in that it is delivered to the individual, and not to the court. It must be pleaded, or brought officially to the knowledge of the court, in order that the court may give it effect in any given case. There is nothing peculiar in it to distinguish it from other acts. It is a deed to the validity of which delivery is essential, and the delivery is not complete without acceptance. It may be rejected by the person to whom it is tendered and, if rejected, there is no power in the court to force it upon the individual. *U. S. v. Wilson*, 7 Pet., 150.

*Effects.*—Subject to exceptions therein provided, a pardon by the President restores to its recipient all rights of property lost by the offense pardoned, unless the property has, by judicial process, become vested in other persons. *Osborn v. U. S.*, 91 U. S., 474; 5 Opin. Att. Gen. (2d ed.), 532.

*Power to mitigate and commute.*—The President may, by an exercise of the pardoning power, mitigate or commute a punishment imposed by any court of the United States. *Ex parte Wells*, 18 How., 307; *In re Ross*, 140 U. S., 453. In mitigating the sentence of a naval court-martial, the President may substitute a suspension for a term of years without pay, for an absolute dismissal from the service; as suspension is but an inferior degree of the same punishment. 1 Opin. Att. Gen., 433.

*Conditional pardons.*—The language of the Constitution is such that the power of the President to pardon conditionally is not one of inference, but is conferred in terms, the language being "to grant reprieves and pardons" which includes absolute as well as conditional pardons. Under this power the President can grant a conditional pardon to a person under sentence of death, offering to commute that punishment into an imprisonment for life. If this is accepted by the convict, he has no right to contend that the pardon is absolute and the condition of it void. *Ex parte Wells*, 18 How., 307; *Osborn v. U. S.*, 91 U. S., 474; *U. S. v. Wilson*, 7 Pet., 150. When a pardon is granted with conditions annexed, the conditions must be performed before the pardon is of any effect. *Waring v. U. S.*, 7 C. Cls. R., 501. One who claims the benefit of a pardon must be held to strict compliance with its conditions. *Hayn v. U. S.*, 7 C. Cls. R., 443; *Scott v. U. S.*, 8 *ibid.*, 457. The condition annexed to a pardon must not be impossible, unusual, or illegal; but it may, with the consent of the prisoner, be any punishment recognized by the statutes, or by the common law as enforced by the State. *Lee v. Murphy*, 22 Grat. (Va.), 789.

*Time of exercise.*—The President of the United States has the conditional power to pardon as well before trial and conviction as afterwards; but it is a power only to be exercised with reserve and for exceptional considerations. 6 Opin. Att. Gen., 20; 1 *ibid.*, 341; 2 *ibid.*, 275; 5 *ibid.*, 687; *Ex parte Garland*, 4 Wall., 333; *Dominick v. Davidson*, 44 Ga., 457; 5 *Blair v. Com.*, 25 Grat. (Va.), 850. It is competent for the President to grant a pardon after the expiration of the term of sentence, thereby relieving from consequential disabilities. *Stetler's Case*, 1 Phil., IX, 38; *Com. v. Bush*, 2 Duv. (Ky.), 264.

*Limitation upon the pardoning power.*—The Constitution gives to Congress the power to dispose of the public property and to the President only the power to



and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of Departments.<sup>1</sup> *Constitution, Art. II, sec. 2, par. 2.* The

pardon crimes; and the President, having no title to forfeited property, can not restore it, though he may pardon the offense which caused the forfeiture. Property confiscated by judgment to the United States is beyond the reach of executive clemency and is absolutely national property. *Knote v. U. S.*, 10 C. Cls. R., 397, 406. *U. S. v. Six Lots of Ground*, 1 Woods, 234. *Osborn v. U. S.*, 91 U. S., 474, 477.

*Pleading.*—A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. \* \* \* The pardon may possibly apply to a different person or to a different crime. It may be absolute or conditional. It may be controverted by the prosecutor and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought before the court by plea, motion, or otherwise. *U. S. v. Wilson*, 7 Pet., 150, 161; *Ex parte Reno*, 66 Mo., 266. The recital of a specific, distinct offense in a pardon by the President, limits its operation to that offense, and such pardon does not embrace any other offense for which separate penalties and punishments are provided. *Ex parte Weimer*, 8 Biss., C. Ct., 321. The conviction having been of two offenses, and the pardon reciting only one, the pardon operates upon the offense recited. *State v. Foley*, 15 Nev., 64.

*Public office.*—An office is a public station, or employment, conferred by the appointment of Government. The term embraces the ideas of tenure, emolument, and duties. \* \* \* The duties are continuing and permanent, not occasional and transitory, and are defined by rules prescribed by Government and not by contract. \* \* \* A Government office is different from a Government contract. The latter, from its nature, is necessarily limited in its duration and specific in its objects. The terms agreed upon define the rights and obligations of both parties, and neither may depart from them without the assent of the other. *U. S. v. Hartwell*, 6 Wall., 385, 394; *U. S. v. Maurice*, 2 Brockenbrough, 103. A public officer is the incumbent of an office "who exercises continuously, and as a part of the regular and permanent administration of the Government, its public powers, trusts, and duties." *Sheboygan Co. v. Parker*, 3 Wall., 93, 96. Unless a person in the service of the Government holds his place by virtue of an appointment by the President, or of one of the courts of justice or heads of Departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States. *U. S. v. Mouat*, 124 U. S., 303, 307; *U. S. v. Germaine*, 99 U. S., 508, 510.

*Appointments to office.*—Appointments provided for by act of Congress, merely in general terms, must be made by and with the advice and consent of the Senate. 6 Op. Att. Gen., 1. When a person has been nominated to an office by the President, confirmed by the Senate, and his commission has been signed by the President, and the seal of the United States affixed thereto, his appointment to that office is complete. Congress may provide \* \* \* that certain acts shall be done by the appointee before he shall enter on the possession of the office under the appointment. These acts then become conditions precedent to the complete investiture of the office; but they are to be performed by the appointee, not by the Executive; all that the Executive can do to invest the person with his office has been completed when the commission has been signed and sealed, and when the person has performed the required condition, his title to enter on the possession of the office is also complete. *U. S. v. Le Baron*, 19 How., 73, 78; *U. S. v. Stewart*, *ibid.*, 79; *Marbury v. Madison*, 1 Cranch, 137.

*Powers of officers.*—All the officers of the Government, from the highest to the lowest, are but agents with delegated powers, and if they act beyond the scope of their delegated powers their acts do not bind the principal. *U. S. v. Maxwell Grant*, 21 Fed. Rep., 19. An officer can only bind the Government by acts which come within a just exercise of his official power. *Hunter v. U. S.*, 5 Pet., 173, 178; *The Floyd Acceptances*, 7 Wall., 666; *State v. Hastings*, 12 Wis., 596. It is a question of law for the court whether an act is a part of the official duty of a public officer. *U. S. v. Buchanan*, 8 How., 83. Every public officer is required to perform all duties which are strictly official, although they may be required by laws passed after he comes into office, and may be cumulative upon his original duties, and although his compensation therefor be wholly inadequate. In such case he must look to the bounty of Congress for any additional reward. *Andrews v. U. S.*, 2 Story, 202. An officer is bound to use that care and diligence in the discharge of his duties that a conscientious and prudent man, acting under a just sense of his obligations, would exercise under the circumstances of a particular case, and if he fails and neglects to do so he is culpable. *U. S. v. Baldrige*, 11 Fed. Rep., 552.

*Presumptions as to official acts.*—The acts of an officer to whom a public duty is assigned, within the sphere of that duty, are prima facie within his power. *U. S. v. Arredondo*, 6 Pet., 691; *U. S. v. Clarke*, 8 *ibid.*, 436, 452; *Percheman v. U. S.*, 7 *ibid.*, 51; *Delassus v. U. S.*, 9 *ibid.*, 117, 134; *Strother v. Lucas*, 12 *ibid.*, 410, 438; *U. S. v. Peralta*, 19 How., 343, 347. When a particular functionary is clothed with the duty of deciding a certain question of fact, his decision in the absence of fraud, is conclusive. *Logan v. The County*, 16 Wall., 6. He who alleges that an officer intrusted with important duty has violated his instructions, must show it. The courts ought to

President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session. *Ibid.*, par. 3.

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require very full proof that an officer has transcended his powers before they so determine. *U. S. v. Peralta*, 19 How., 343, 347; *Delassus v. U. S.*, 9 Pet., 117, 134. When a public officer is to do any act on proof of certain facts, of the competency and sufficiency of which he is to judge, it is to be presumed, from the doing of the act, that the proof was regularly and satisfactorily made, and its sufficiency is not subject to reexamination. *Phil. and Tren. R. R. Co. v. Stimpson*, 14 Pet., 448.

*Tenure.*—The power to appoint includes the power to remove, when the Constitution has not otherwise provided, and when the laws of Congress have not fixed a tenure of office. *Ex parte Hennen*, 13 Pet., 230; *U. S. v. Avery*, Deady, 204. When Congress, by law, vests the appointment of inferior officers in the heads of Departments, it may limit and restrict the power of removal as it deems best for the public interests. *U. S. v. Perkins*, 116 U. S., 483.

*Resignation* —That a public office may be vacated by resignation is established by long and familiar practice, and is recognized by express provision of law. Nor can there be any doubt that a resignation may be effected by the concurrence of the officer and the appointing power; its essential elements are an intent to resign on the one side and an acceptance on the other. It may be either in writing or by parol, expressly or by implication. To perfect a resignation nothing more is necessary than that the proper authority manifest in some way its acceptance of the offer to resign. It then becomes effectual, and operates to relieve the incumbent either immediately or on the day specially fixed according to its terms. An offer to resign is revocable prior to acceptance; after acceptance and before it has taken effect it may be modified, or withdrawn by consent of both parties, but this control extends no further. When a resignation once takes effect the official relations of the incumbent are ipso facto dissolved; he has no longer any right to, or hold upon, the office. 14 Opin. Att. Gen., 259.



## CHAPTER II.

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### PROVISIONS APPLICABLE TO THE SEVERAL EXECUTIVE DEPARTMENTS.

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| <p>Par.</p> <p>5. Application of provisions of this title.</p> <p>6. Departmental regulations.</p> <p>7. Vacancies, how temporarily filled.</p> <p>8. Secretary of War may authorize chief clerk to sign requisitions, etc., in his absence.</p> <p>9. Vacancies in subordinate offices.</p> <p>10. Discretionary authority of the President.</p> <p>11. Commanding General of the Army, etc., may be designated by President to perform duties of Secretary of War.</p> <p>12. Temporary appointments limited to thirty days.</p> <p>13. Restriction on temporary appointments.</p> <p>14. Extra compensation disallowed.</p> <p>15. Chief clerks to supervise subordinate clerks.</p> <p>16. Chief clerks to distribute duties, etc.</p> <p>17. Duty of chief on receipt of report.</p> <p>18. Disbursing clerks.</p> <p>19. Hours of labor in Executive Departments. Leaves of absence. Sick leaves. Extensions.</p> | <p>Par.</p> <p>20. Classification of Department clerks.</p> <p>21. Examinations.</p> <p>22. Clerkships open to women.</p> <p>23. Distribution of clerks. Details.</p> <p>24. Transfer of duties to clerks of lower class.</p> <p>25. Salaries of persons employed in the Departments.</p> <p>26. Temporary clerks.</p> <p>27. Authority to employ clerks and other employees.</p> <p>28. Employees, clerks, etc., beyond provisions of law.</p> <p>29. Extra compensation to clerks prohibited.</p> <p>30. Restriction on employing extra clerks.</p> <p>31. Employees to be paid from specific appropriations only. Civil officers not to be detailed for duty in the District of Columbia. Appointments to be apportioned among the States and Territories.</p> <p>32. Oaths, when administered by officers, etc.</p> <p>33. No Department officer to charge fees for oath of office to employees.</p> |
|---|--|

Par.

34. Chief clerks of Executive Departments to administer oath of office free.
35. Per diem employees to receive pay for certain holidays.
36. Decoration Day.
37. Labor Day to be a public holiday.
38. Subpœnas to witnesses.
39. Witness fees.
40. Compelling testimony.
41. Professional assistance, how obtained.
42. Evidence to be furnished by the Departments in suits pending in the Court of Claims.
43. Employment of attorneys or counsel.
44. Persons formerly in the Departments not to prosecute claims in them.
45. Purchases from contingent funds.
46. Expenditures for newspapers.
47. Annual report of expenditure of contingent funds.
48. Annual estimates. Statement of condition of business to be submitted.
49. Report of clerks employed.
50. Time of making annual reports.

Par.

51. Department reports, when to be furnished to printer.
52. Inventories of property.
53. Biennial list of persons employed in each Department to be filed in the Interior Department.
54. Report to Congress in annual estimates of buildings rented.
55. Report of number of employees who are below a fair standard of efficiency.
56. Requesting, etc., contributions by officers of Government for political purposes prohibited.
57. Draping public buildings in mourning prohibited.
58. Closing Departments for deceased ex-officials prohibited.
59. Official postage stamps for departmental use.
60. Penalty envelopes for inclosure of answers to official communications.
61. No contracts to be made for rent of any building in Washington without appropriation therefor, etc.

Application of provisions of this title.

5. The provisions of this title shall apply to the following Executive Departments:

First. The Department of State.

Sec. 158, R. S. Second. The Department of War.

Third. The Department of the Treasury.

Sec. 159, R. S. Fourth. The Department of Justice.

Fifth. The Post-Office Department.

Sixth. The Department of the Navy.

Seventh. The Department of the Interior.

Word "Department."

The word "Department" when used alone in this title, and titles five, six, seven, eight, nine, ten, and eleven, means one of the Executive Departments enumerated in the preceding section.<sup>1</sup>

<sup>1</sup> The titles so numbered in the Revised Statutes are the ones above referred to.

6. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of his Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.<sup>1</sup>

Apr. 30, 1798, c. 35, v. 1, p. 553; June 22, 1870, c. 150, s. 8, v. 16, p. 163; Mar. 3, 1849, c. 108, v. 9, p. 285.

Departmental regulations.

July 27, 1789, c. 4, v. 1, p. 28; Sept. 15, 1789, c. 14, v. 1, p. 68; Aug. 7, 1849, c. 7, v. 1, p. 49; Sept. 2, 1789, c. 12, v. 1, p. 65; June 8, 1872, c. 335, v. 17, p. 283; Sec. 161, R. S.

<sup>1</sup>The President speaks and acts through the heads of the several Executive Departments in relation to subjects which appertain to their respective duties. *Wilcox v. Jackson*, 13 Pet., 498, 513; *Wolsey v. Chapman*, 101 U. S., 755. It is the general theory of departmental administration that the heads of the Executive Departments are the executors of the will of the President. 10 Opin. Att. Gen., 527. As a general rule the direction of the President is to be presumed in all instructions and orders issuing from the competent Department. 7 id., 453. Official instructions issued by the heads of the several Executive Departments, civil and military, within their respective jurisdictions, are valid and lawful, without containing express reference to the direction of the President. 7 id., 453. The duties of the heads of the several Executive Departments are derived, in part, from the Constitution and are, in part, imposed by statute. In the execution of the former, they act as the representatives of the President, to whom they are responsible for their correct performance. For duties imposed by statute their responsibility is to the legislature, and they are controlled in all matters relating to performance by such statutory rules and regulations as Congress may see fit to impose. (See *Marbury v. Madison*, 1 Cr. 137, and par. 1, note 1.)

The executive power is vested in a President, and so far as his powers are derived from the Constitution he is beyond the reach of any other Department, except in the mode prescribed by the Constitution through the impeaching power, but it by no means follows that every officer in every branch of that Department is under the exclusive direction of the President. \* \* \* There are certain political duties imposed upon many officers in the executive department the discharge of which is under the direction of the President, but it would be an alarming doctrine that Congress can not impose upon any executive officer any duty they may think proper, which is not repugnant to any rights secured and protected by the Constitution, and, in such cases, the duty and responsibility grow out of and are subject to the control of the law and not to the direction of the President, and this is emphatically the case where the duty is of a ministerial character. *Kendall v. U. S.*, 12 Pet., 524, 610.

*Ministerial and discretionary duties.*—The duties performed by the heads of the several Executive Departments are either ministerial or discretionary or quasi judicial in character. "The question whether the legality of an act of the head of a Department be examinable in a court of justice or not must always depend on the nature of the act. By the Constitution of the United States the President is invested with certain important political powers in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. To aid him in the performance of these duties he is authorized to appoint certain officers, who act by his authority and in conformity to his orders. In such cases their acts are his acts, and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists and can exist no power to control their discretion. The subjects are political. They respect the nation, not individual rights, and being intrusted to the Executive the decision of the Executive is conclusive. \* \* \* The conclusion is that where the heads of Departments are the political or confidential agents of the Executive, merely to execute the will of the President, nothing can be more perfectly clear than that their acts are only politically examinable. *Marbury v. Madison*, 1 Cr., 137, 166; *Kendall v. U. S.*, 12 Pet., 524, 611; *Decatur v. Paulding*, 14 Pet., 497, 515. We are not aware of any case in England or this country in which it has been held that a public officer, acting to the best of his judgment and from a sense of duty, in a matter of account with an individual, has been held liable for an error of judgment. \* \* \* A public officer is not liable to an action if he falls into error in a case where the act to be done is not merely a ministerial one but is one in relation to which it is his duty to exercise judgment and discretion, even though an individual may suffer by his mistake. A contrary principle would indeed be pregnant with the greatest mischiefs. *Kendall v. Stokes*, 3 How., 87, 98; *Gould v. Hammond*, 1 McAll., 235, 243; *Noble v. Union River Logging Co.*, 147 U. S., 165, 171.

A ministerial duty, the performance of which may, in proper cases, be required of the head of a Department by judicial process, is one in respect to which nothing is left to discretion. It is a simple, definite duty, arising under conditions admitted or proved to exist and imposed by law. *Mississippi v. Johnson*, 4 Wall., 475, 498; *Marbury v. Madison*, 1 Cr., 137; *Kendall v. Stockton*, 12 Pet., 524. As a mandamus can only be granted because there is no other adequate remedy at law, an action for damages can not be afterwards sustained, for the same cause of action, the two being inconsistent. *Kendall v. Stokes*, 3 How., 87, 102.

*Liability for damages.*—The executive officers of the United States are personally liable at law for damages, in the ordinary forms of action, for illegal official, or min-

## TEMPORARY VACANCIES, HOW FILLED.

**Vacancies; how temporarily filled.** July 23, 1868, c. 227, s. 1, v. 15, p. 168.  
**Sec. 177, R. S.** 7. In case of the death, resignation, absence, or sickness of the head of any Department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine [Rev. Stat., par. 10, post], perform the duties of such head until a successor is appointed, or such absence or sickness shall cease.

**Secretary of War may authorize chief clerk to sign requisitions, etc., in his absence.** Mar. 4, 1874, v. 18, p. 19.  
**8.** When, from illness or other cause, the Secretary of War is temporarily absent from the War Department, he may authorize the chief clerk of the Department to sign requisitions upon the Treasury Department, and other papers requiring the signature of said Secretary; the same, when signed by the chief clerk during such temporary absence, to be of the same force and effect as if signed by the Secretary of War himself. *Act of March 4, 1874 (18 Stat. L., 19).*

**Vacancies in subordinate offices.** July 23, 1868, c. 227, s. 2, v. 15, p. 168.  
**Sec. 178, R. S.** 9. In case of the death, resignation, absence, or sickness of the chief of any Bureau, or of any officer thereof, whose appointment is not vested in the head of the Department, the assistant or deputy of such chief or of such officer, or if there be none, then the chief clerk of such Bureau, shall, unless otherwise directed by the President, as provided by section one hundred and seventy-nine, perform the duties of such chief or of such officer until a successor is appointed or such absence or sickness shall cease.

**Discretionary authority of the President.** July 23, 1868, c. 227, s. 3, v. 15, p. 168; June 22, 1870, c. 150, s. 2, v. 16, p. 162.  
**Sec. 179, R. S.** 10. In any of the cases mentioned in the two preceding sections, except the death, resignation, absence, or sickness of the Attorney-General, the President may, in his discretion, authorize and direct the head of any other Department or any other officer in either Department whose appointment is vested in the President, by and with the advice and consent of the Senate, to perform the duties of the vacant office until a successor is appointed, or the sickness or absence of the incumbent shall cease.

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isterial acts, or omissions, to the injury of an individual. *Marbury v. Madison*, 1 Cr., 137, 166; *Gaines v. Thompson*, 7 Wall., 347; *Amy v. The Supervisors*, 11 Wall., 136, 137, 166. Where a ministerial officer acts in good faith, he is not liable in exemplary damages for an injury done; but he can claim no further exemption where his acts are clearly against the law. *Tracy v. Swartwout*, 10 Pet., 80.

*Measure of damages.*—Where the law requires absolutely a ministerial act to be done by a public officer, and he neglects or refuses to do such act, he may be compelled to respond in damages to the extent of the injury arising from his conduct. A mistake as to his duty and honest intentions will not excuse the offender. *Amy v. The Supervisors*, 11 Wall., 136. Where an action is brought for an injury done in the discharge of an official duty, the damages are measured generally by the extent of that injury. *Bispham v. Taylor*, 2 McLean, 408. *Pierce v. Strickland*, 2 Story, 292. For general provisions respecting public officers, see Chapter IV and par. 4, ante.

11. The President may authorize and direct the commanding general of the Army or the chief of any military bureau of the War Department to perform the duties of the Secretary of War under the provisions of section one hundred and seventy-nine of the Revised Statutes, and section twelve hundred and twenty-two of the Revised Statutes shall not be held or taken to apply to the officer so designated by reason of his temporarily performing such duties. *Act of August 5, 1882 (22 Stat. L., 238).*

12. A vacancy occasioned by death or resignation must not be temporarily filled under the three preceding sections for a longer period than thirty days. *Act of February 6, 1891 (26 Stat. L., 733).*

13. No temporary appointment, designation, or assignment of one officer to perform the duties of another, in the cases covered by sections one hundred and seventy-seven and one hundred and seventy-eight [Rev. Stat.], shall be made otherwise than as provided by those sections, except to fill a vacancy happening during a recess of the Senate.

14. An officer performing the duties of another office, during a vacancy, as authorized by sections one hundred and seventy-seven, one hundred and seventy-eight [Rev. Stat.], and one hundred and seventy-nine [ibid.], is not by reason thereof entitled to any other compensation than that attached to his proper office.

#### CHIEF CLERKS—DISBURSING CLERKS.

15. Each chief clerk in the several Departments, and Bureaus, and other offices connected with the Departments, shall supervise, under the direction of his immediate superior, the duties of the other clerks therein, and see that they are faithfully performed.<sup>1</sup>

16. Each chief clerk shall take care, from time to time, that the duties of the other clerks are distributed with equality and uniformity, according to the nature of the case. He shall revise such distribution from time to time, for the purpose of correcting any tendency to undue accumulation or reduction of duties, whether arising from individual negligence or incapacity, or from increase or diminution of particular kinds of business. And he shall report monthly to his superior officer any existing defect that he may be aware of in the arrangement or dispatch of business.

<sup>1</sup>For authority to administer oaths of office see the act of August 29, 1890 (26 Stat. L. 371), par. 34, post.



Duty of chief  
on receipt of re-  
port.

Aug. 26, 1842, c.  
202, s. 13, v. 5, p.  
525.

Sec. 175, R. S.

17. Each head of a Department, chief of a Bureau, or other superior officer, shall, upon receiving each monthly report of his chief clerk, rendered pursuant to the preceding section, examine the facts stated therein, and take such measures, in the exercise of the powers conferred upon him by law, as may be necessary and proper to amend any existing defects in the arrangement or dispatch of business disclosed by such report.

Disbursing  
clerks.

Mar. 3, 1853, c.  
97, s. 3, v. 10, pp.  
209, 211; Mar. 3,  
1855, c. 175, s. 4, v.  
10, p. 669; Mar.  
3, 1873, c. 226, s. 1,  
v. 17, p. 485 (492).

Sec. 176, R. S.

18. The disbursing clerks authorized by law in the several Departments shall be appointed by the heads of the respective Departments, from clerks of the fourth class; and shall each give a bond to the United States for the faithful discharge of the duties of his office according to law in such amount as shall be directed by the Secretary of the Treasury, and with sureties to the satisfaction of the Solicitor of the Treasury; and shall from time to time renew, strengthen, and increase his official bond, as the Secretary of the Treasury may direct. Each disbursing clerk, except the disbursing clerk of the Treasury Department, must, when directed so to do by the head of the Department, superintend the building occupied by his Department. Each disbursing clerk is entitled to receive, in compensation for his services in disbursing, such sum in addition to his salary as a clerk of the fourth class as shall make his whole annual compensation two thousand dollars a year.

#### HOURS OF LABOR IN THE EXECUTIVE DEPARTMENTS— LEAVES OF ABSENCE.

Hours of labor  
in Executive De-  
partments.

Act Mar. 3,  
1893, v. 27, p. 715.

19. That on and after July first, eighteen hundred and ninety-three, it shall be the duty of the heads of the several Executive Departments, in the interest of the public service, to require of all clerks and other employees, of whatever grade or class, in their respective departments, not less than seven hours of labor each day, except Sundays and days declared public holidays by law or Executive order: *Provided*, That the heads of the Department may, by special order, stating the reason, further extend or limit the hours of service of any clerk or employee in their Departments, respectively; but in case of an extension it shall be without additional compensation: *And provided further*, That the head of any Department may grant thirty days' annual and thirty days' sick leave, with pay, in any one year to each clerk or employee, the sick leave to be allowed in cases of personal illness only, or where some member of the immediate family is afflicted with a conta-

*Provisos.*

Extending or  
limiting hours.

Annual and  
sick leave, with  
pay.

gious disease and requires the care and attendance of such employee, or where his or her presence in the Department would jeopardize the health of fellow clerks: *And be it further provided*, That in exceptional and meritorious cases, <sup>Extension of sick leave.</sup> where to limit such sick leave would work peculiar hardship, it may be extended, in the discretion of the head of the Department, with pay, not exceeding sixty days in any <sup>Limit, with pay.</sup> one case or in any one calendar year.

This section shall not be construed to mean that so long <sup>Excessive absence.</sup> as a clerk or employee is borne upon the rolls of the Department in excess of the time herein provided for or granted, that he or she shall be entitled to pay during the period of <sup>No pay at expiration of granted leave.</sup> such excessive absence, but that the pay shall stop upon the expiration of the granted leave.<sup>1</sup> *Sec. 5, act of March 3, 1893 (27 Stat. L., 715).*

#### CLASSIFICATION OF CLERKS.

20. The clerks in the Departments shall be arranged in <sup>Classification of Department clerks.</sup> four classes, distinguished as the first, second, third, and fourth classes. <sup>Mar. 3, 1853, c. 77, s. 3, v. 10, p. 209; Mar. 3, 1855, c. 175, s. 4, v. 10, p. 669; Aug. 15, 1876, c. 287, s. 3, v. 19, p. 169. Sec. 163, R. S.</sup>

21. No clerk shall be appointed in any Department in <sup>Examinations: Mar. 3, 1853, c. 97, s. 3, v. 10, p. 209; Mar. 3, 1855, c. 175, s. 4, v. 10, p. 669. Sec. 164, R. S.</sup> either of the four classes above designated until he has been examined and found qualified by a board of three examiners, to consist of the chief of the Bureau or office into which such clerk is to be appointed and two other clerks to be selected by the head of the Department.<sup>2</sup>

22. Women may, in the discretion of the head of any <sup>Clerkships open to women. July 12, 1870, c. 251, s. 2, v. 16, pp. 230, 250. Sec. 165, R. S.</sup> Department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensations, as are prescribed for men.

23. Each head of a Department may, from time to time, <sup>Distribution of clerks.</sup> alter the distribution among the various bureaus and offices of his Department, of the clerks and other employees allowed by law, except such clerks or employees as may be required by law to be exclusively engaged upon some specific work, as he may find it necessary and proper to do, but all details hereunder shall be made by written order of the head of the Department, and in no case be for a period of time exceeding one hundred and twenty days: *Provided*, That details so made may, on expiration, be

<sup>1</sup>This section operates to repeal section 162 of the Revised Statutes in respect to the hours of business in the several Executive Departments. It replaces section 4 of the act of March 3, 1883 (sec. 4, act of March 3, 1883, 22 Stat. L., 563), in respect to the same subject.

<sup>2</sup>For rules regulating the procurement of services in the several Executive Departments seen in Chapter IV, the title *The Civil Service*.

renewed from time to time by written order of the head of the Department, in each particular case, for periods of not exceeding one hundred and twenty days. All details heretofore made are hereby revoked, but may be renewed as provided herein. *Sec. 3, act of May 28, 1896 (29 Stat. L., 179).*

Transfer of duties to clerks of lower class.

*Sec. 3, Aug. 15, 1876, v. 19, p. 169.*

Preference of discharged soldiers and sailors.

24. That whenever, in the judgment of the head of any Department the duties assigned to a clerk of one class can be as well performed by a clerk of a lower class or by a female clerk, it shall be lawful for him to diminish the number of clerks of the higher grade and increase the number of the clerks of the lower grade within the limit of the total appropriation for such clerical service: *Provided*, That in making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States, and the widows and orphans of deceased soldiers and sailors. *Sec. 3, act of August 15, 1876 (19 Stat. L., 169).*

#### . SALARIES.

Salaries of persons employed in the Departments.

*Mar. 3, 1853, c. 97, s. 3, v. 10, pp. 209, 211; Apr. 22, 1854, c. 52, s. 1, v. 10, p. 276; Aug. 18, 1856, Res. 18, v. 11, p. 145; July 23, 1866, c. 208, s. 6, v. 14, p. 207; July 12, 1870, c. 251, s. 3, v. 16, pp. 230, 250.*

*Sec. 167, R. S.*

25. The annual salaries of clerks and employees in the Departments, whose compensation is not otherwise prescribed, shall be as follows:

First. To clerks of the fourth class, eighteen hundred dollars.

Second. To clerks of the third class, sixteen hundred dollars.

Third. To clerks of the second class, fourteen hundred dollars.

Fourth. To clerks of the first class, twelve hundred dollars.

Fifth. To the women employed in duties of a clerical character, subordinate to those assigned to clerks of the first class, including copyists and counters, or temporarily employed to perform the duties of a clerk, nine hundred dollars.

Sixth. To messengers, eight hundred and forty dollars.

Seventh. To assistant messengers, seven hundred and twenty dollars.

Eighth. To laborers, seven hundred and twenty dollars.<sup>1</sup>

Ninth. To watchmen, seven hundred and twenty dollars.<sup>1</sup>

Temporary clerks.  
*Apr. 22, 1854, c. 52, s. 1, v. 10, p. 276.*

26. Except when a different compensation is expressly prescribed by law, any clerk temporarily employed to

<sup>1</sup> The annual acts of appropriation since that of June 15, 1880 (sec. 3, act of June 15, 1880, 21 Stat. L., 237), have contained provisions fixing the salaries of laborers and watchmen at \$660 and of charwomen at \$240. (Sec. 2, act of July 31, 1894, 28 Stat. L., 205.)

perform the same or similar duties with those belonging to clerks of either class is entitled to the same salary as is allowed to clerks of that class. (*See sec. 242, R. S.*)

27. Each head of a Department is authorized to employ in his Department such number of clerks of the several classes recognized by law, and such messengers, assistant messengers, copyists, watchmen, laborers, and other employees, and at such rates of compensation, respectively, as may be appropriated for by Congress from year to year. (*See secs. 201, 214, 235, 328, 351, 393, 416, 440, 476, R. S.*)

Authority to employ clerks and other employees.

Mar. 3, 1875, c. 129, v. 18, pp. 360, 361, 365; c. 130, ss. 2, 3, v. 18, p. 399.

Sec. 169, R. S.

28. That the executive officers of the Government are hereby prohibited from employing any clerk, agent, engineer, draughtsman, messenger watchman, laborer, or other employee, in any of the Executive Departments in the city of Washington, or elsewhere beyond provision made by law.<sup>1</sup> *Sec. 5, act of August 15, 1876 (19 Stat. L., 169).*

Employing clerks, etc., beyond provisions by law.

Sec. 5, Aug. 15, 1876, v. 19, p. 169.

29. No money shall be paid to any clerk employed in either Department at an annual salary, as compensation for extra services, unless expressly authorized by law.

Extra compensation to clerks prohibited.

1844, c. 105, s. 1, v. 5, pp. 681, 687; Feb. 28, 1867, Res. 30, s. 2, v. 14, p. 569.

Mar. 3, 1863 c. 97, 211; June 17, s. 3, v. 10, pp. 209, 210.

Sec. 170, R. S.

30. No extra clerk shall be employed in any Department, Bureau, or office, at the seat of Government, except during the session of Congress, or when indispensably necessary in answering some call made by either House of Congress at one session to be answered at another; nor then, except by order of the head of the Department in which, or in some Bureau or office of which, such extra clerk shall be employed. And no extra clerk employed in either of the Departments shall receive compensation except for time actually and necessarily employed, nor any greater compensation than three dollars a day for copying, or four dollars a day for any other service.<sup>1</sup>

Restrictions on employing extra clerks.

Aug. 26, 1842, c. 202, s. 15, v. 5, p. 526; Aug. 15, 1876, c. 287, s. 5, v. 19, p. 169.

Sec. 171, R. S.

31. That no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall after the first day of October next be employed in any of the Executive Departments, or subordinate bureaus or offices thereof at the seat of Government, except only at such rates and in such numbers, respectively, as may be specifically appropriated for by Congress for such clerical and other personal services for each fiscal year; and no civil officer, clerk, draughtsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall hereafter be employed at the seat of Government in any Executive Department

Employees to be paid from specific appropriations only.

Sec. 4, Aug. 5, 1882, v. 22, p. 255.

<sup>1</sup> See par. 31, post.

R. S. 172 re-  
pealed.

Civil officers,  
etc., elsewhere  
employed, not to  
be detailed for  
duty in the Dis-  
trict of Columbia.

*Proviso.*

Appointments,  
etc., to be appor-  
tioned among the  
States and Terri-  
tories.

*Proviso.*

or subordinate bureau or office thereof or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor specifically provided in the law granting the appropriation, and then only for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services, and after the first day of October next section one hundred and seventy-two of the Revised Statutes, and all other laws and parts of laws inconsistent with the provisions of this act, and all laws and parts of laws authorizing the employment of officers, clerks, draughtsmen, copyists, messengers, assistant messengers, mechanics, watchmen, laborers, or other employees at a different rate of pay or in excess of the numbers authorized by appropriations made by Congress, be, and they are hereby, repealed; and thereafter all details of civil officers, clerks, or other subordinate employees from places outside of the District of Columbia for duty within the District of Columbia, except temporary details for duty connected with their respective offices, be, and are hereby, prohibited; and thereafter all moneys accruing from lapsed salaries, or from unused appropriations for salaries, shall be covered into the Treasury: *Provided*, That the sums herein specifically appropriated for clerical or other force heretofore paid for out of general or specific appropriations may be used by the several heads of Departments to pay such force until the said several heads of Departments shall have adjusted the said force in accordance with the provisions of this act; and such adjustment shall be effected before October first, eighteen hundred and eighty-two. And in making such adjustment the employees herein provided for shall, as far as may be consistent with the interests of the service, be apportioned among the several States and Territories according to population: *Provided further*, That any person performing duty in any capacity as officer, clerk, or otherwise in any Department at the date of the passage of this act who has heretofore been paid from any appropriation made for contingent expenses or for any contingent or general purpose, and whose office or place is specifically provided for herein, under the direction of the head of that Department may be continued in such office, clerkship, or employment without a new appointment thereto, but shall be charged to the quotas of the several States and Territories from which they are respectively appointed and nothing herein shall be construed

to repeal or modify section one hundred and sixty-six of the Revised Statutes of the United States.<sup>1</sup> *Sec. 4, act of August 5, 1882 (22 Stat. L., 255).*

## ADMINISTRATION OF OATHS.

**32.** Any officer or clerk of any of the Departments lawfully detailed to investigate frauds or attempts to defraud on the Government, or any irregularity or misconduct of any officer or agent of the United States, shall have authority to administer an oath to any witness attending to testify or depose in the course of such investigation.

Oaths, when administered by officers, etc.  
Apr. 10, 1869, Res. No. 15, s. 2, v. 16, p. 55; Mar. 7, 1870, c. 23, v. 16, p. 75.  
Sec. 183, R. S.

**33.** No officer, clerk, or employee of any Executive Department who is also a notary public or other officer authorized to administer oaths shall charge or receive any fee or compensation for administering oaths of office to employees of such Department required to be taken on appointment or promotion therein. *Act of August 29, 1890 (26 Stat. L., 371).*

No Department officer, etc., to charge fees for oath of office to employees.  
Aug. 29, 1890, v. 26, p. 371.

**34.** The chief clerks of the several Executive Departments and of the various bureaus and offices thereof in Washington, District of Columbia, are hereby authorized and directed, on application and without compensation therefor, to administer oaths of office to employees required to be taken on their appointment or promotion. *Act of August 29, 1890 (26 Stat. L., 371).*

Chief clerks of Executive Departments, etc., to administer oath of office free.  
Aug. 29, 1890, v. 26, p. 371.

## LEGAL HOLIDAYS.

**35.** That the employees of the Navy-Yard, Government Printing Office, Bureau of Printing and Engraving, and all other per diem employees of the Government on duty at Washington, or elsewhere in the United States, shall be allowed the following holidays, to wit: The first day of January, the twenty-second day of February, the fourth day of July, the twenty-fifth day of December, and such days as may be designated by the President as days for national thanksgiving, and shall receive the same pay as on other days. *Joint res. No. 5, January 9, 1885 (23 Stat. L., 516).*

Per diem employees of the Government to receive pay for certain holidays.  
Res. No. 5, Jan. 6, 1885, v. 23, p. 516.

**36.** That all per diem employees of the Government, on duty at Washington or elsewhere in the United States,

Per diem employees, allowed pay for Decoration Day and Fourth of July.

<sup>1</sup>Under section 4 of the act of August 5, 1882 (22 Stat. L., 255), no civil officer, clerk, draftsman, copyist, messenger, assistant messenger, mechanic, watchman, laborer, or other employee shall be employed at the seat of Government, in any Executive Department or subordinate bureau or office thereof, or be paid from any appropriation made for contingent expenses, or for any specific or general purpose, unless such employment is authorized and payment therefor provided in the law granting the appropriation. III Dig. Compt. Dec., sec. 82, par. p. 28. See, also, par. 23 and par. 28, ante.

Res. No. 6, Feb.  
23, 1887, v. 24, p.  
644.

shall be allowed the day of each year which is celebrated as "Memorial" or "Decoration Day" and the fourth of July of each year, as holiday, and shall receive the same pay as on other days. *Joint res. No. 6, February 23, 1887 (24 Stat. L., 644).*

Labor Day to  
be a public holi-  
day. June 28,  
1894, v. 28, p. 96.

**37.** That the first Monday of September in each year, being the day celebrated and known as Labor's Holiday, is hereby made a legal public holiday, to all intents and purposes, in the same manner as Christmas, the first day of January, the twenty-second day of February, the thirtieth day of May, and the fourth day of July are now made by law public holidays. *Act of June 28, 1894 (28 Stat. L., 96).*

#### PROSECUTION OF CLAIMS.

Subpœnas to  
witnesses.

**38.** Any head of a Department or Bureau in which a claim against the United States is properly pending may apply to any judge or clerk of any court of the United States, in any State, District, or Territory, to issue a subpœna for a witness being within the jurisdiction of such court, to appear at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, there to give full and true answers to such written interrogatories and cross-interrogatories as may be submitted with the application, or to be orally examined and cross-examined upon the subject of such claim.

Witnesses'  
fees.

**39.** Witnesses subpœnaed pursuant to the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States.

Sec. 185, R. S.  
Compelling tes-  
timony.

**40.** If any witness, after being duly served with such subpœna, neglects or refuses to appear, or, appearing, refuses to testify, the judge of the district in which the subpœna issued may proceed, upon proper process, to enforce obedience to the subpœna, or to punish the disobedience, in like manner as any court of the United States may do in case of process of subpœna ad testificandum issued by such court.

Professional  
assistance; how  
obtained.

Feb. 14, 1871, c.  
51, s. 3, v. 16, p.  
412.

Sec. 187, R. S.

**41.** Whenever any head of a Department or Bureau having made application pursuant to section one hundred and eighty-four, for a subpœna to procure the attendance of a witness to be examined, is of opinion that the interests of the United States require the attendance of counsel at the examination, or require legal investigation of any claim pending in his Department or Bureau, he shall give notice thereof to the Attorney-General, and of all facts

necessary to enable the Attorney-General to furnish proper professional service in attending such examination, or making such investigation, and it shall be the duty of the Attorney-General to provide for such service.

42. In all suits brought against the United States in the Court of Claims founded upon any contract, agreement, or transaction with any Department, or any Bureau, officer, or agent of a Department, or where the matter or thing on which the claim is based has been passed upon and decided by any Department, Bureau, or officer authorized to adjust it, the Attorney-General shall transmit to such Department, Bureau, or officer, a printed copy of the petition filed by the claimant, with a request that the Department, Bureau, or officer, shall furnish to the Attorney-General all facts, circumstances, and evidence touching the claim in the possession or knowledge of the Department, Bureau, or officer. Such Department, Bureau, or officer shall, without delay, and within a reasonable time, furnish the Attorney-General with a full statement, in writing, of all such facts, information, and proofs. The statement shall contain a reference to or description of all such official documents or papers, if any, as may furnish proof of facts referred to in it, or may be necessary and proper for the defense of the United States against the claim, mentioning the Department, office, or place where the same is kept or may be procured. If the claim has been passed upon and decided by the Department, Bureau, or officer, the statement shall succinctly state the reasons and principles upon which such decision was based. In all cases where such decision was founded upon any act of Congress, or upon any section or clause of such act, the same shall be cited specifically; and if any previous interpretation or construction has been given to such act, section, or clause by the Department, Bureau, or officer, the same shall be set forth succinctly in the statement, and a copy of the opinion filed, if any, shall be annexed to it. Where any decision in the case has been based upon any regulation of a Department, or where such regulation has, in the opinion of the Department, Bureau, or officer transmitting such statement, any bearing upon the claim in suit, the same shall be distinctly quoted at length in the statement. But where more than one case, or a class of cases, is pending, the defense to which rests upon the same facts, circumstances, and proofs, the Department, Bureau, or officer shall only be required to certify and transmit one statement of the same, and such statement shall be held to apply to all such

Evidence to be furnished by the Departments in suits pending in the Court of Claims.

June 25, 1868, c. 71, s. 6, v. 15, p. 76.  
Sec. 188, R. S.



cases, as if made out, certified, and transmitted in each case respectively.<sup>1</sup>

Employment of attorneys or counsel.

June 22, 1870, c. 150, s. 17, v. 16, p. 164.

Sec. 189, R. S. of Justice, the officers of which shall attend to the same.<sup>2</sup>

Persons formerly in the Departments not to prosecute claims in them.

June 1, 1872, c. 256, s. 5, v. 17, p. 202.

Sec. 190, R. S. 44. It shall not be lawful for any person appointed after the first day of June, one thousand eight hundred and seventy-two, as an officer, clerk, or employee in any of the Departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said Departments while he was such officer, clerk, or employee, nor in any manner, nor by any means, to aid in the prosecution of any such claim, within two years next after he shall have ceased to be such officer, clerk, or employee.

#### CONTINGENT FUNDS.

Purchases from contingent funds.

Aug. 26, 1842, c. 202, s. 19, v. 5, p. 527.

Sec. 3683, R. S. 45. No part of the contingent fund appropriated to any Department, Bureau, or office, shall be applied to the purchase of any articles except such as the head of the Department shall deem necessary and proper to carry on the business of the Department, Bureau, or office, and shall, by written order, direct to be procured.<sup>3</sup>

Expenditure for newspapers.

Aug. 26, 1842, c. 202, s. 16, v. 5, p. 526.

Sec. 192, R. S. 46. The amount expended in any one year for newspapers, for any Department, except the Department of State, including all the Bureaus and offices connected therewith, shall not exceed one hundred dollars. And all newspapers purchased with the public money for the use of either of the Departments must be preserved as files for such Department.

Annual report of expenditure of contingent funds.

Aug. 26, 1842, c. 202, s. 20, v. 5, p. 527.

Sec. 193, R. S. 47. The head of each Department shall make an annual report to Congress, giving a detailed statement of the manner in which the contingent fund for his Department, and for the Bureaus and offices therein, has been expended, giving the names of every person to whom any portion thereof has been paid; and if for anything furnished, the quantity and price; and if for any service rendered, the nature of such service, and the time employed, and the par-

<sup>1</sup> See the title "The Court of Claims" in the chapter entitled THE DEPARTMENT OF JUSTICE.

<sup>2</sup> See Chapter VII and par. 41 ante.

<sup>3</sup> Section 3683, Revised Statutes, requires that the written order therein mentioned shall be given by the head of the Department before the articles to be paid for from the contingent fund are procured, and a subsequent approval is not sufficient. 11 Dig. Compt. Dec., 1. This section applies only to cases where an appropriation is made in a lump sum for "contingent, incidental, or miscellaneous expenses," or under similar words, and where Congress has specifically designated appropriations for enumerated items as being for "contingent, incidental, or miscellaneous expenses." Ibid., 42. When an item is properly payable from an appropriation for contingent expenses, the discretion of the officer charged with the duty of expending said fund is not subject to review by the accounting officers upon any question as to the necessity or advisability of his expenditures. Ibid., 80.

ticular occasion or cause, in brief, that rendered such service necessary; and the amount of all former appropriations in each case on hand, either in the Treasury or in the hands of any disbursing officer or agent. And he shall require of the disbursing officers, acting under his direction and authority, the return of precise and analytical statements and receipts for all the moneys which may have been from time to time during the next preceding year expended by them, and shall communicate the results of such returns and the sums total, annually, to Congress.

## ANNUAL REPORTS, ESTIMATES.

48. That it shall be the duty of the heads of the several Executive Departments, and of other officers authorized or required to make estimates, to furnish to the Secretary of the Treasury, on or before the first day of October of each year, their annual estimates for the public service, to be included in the Book of Estimates prepared by law under his direction; and the Secretary of the Treasury shall submit, as part of the appendix to the Book of Estimates, such extracts from the annual reports of the several heads of Departments and Bureaus as relate to estimates for appropriations, and the necessities therefor. *Sec. 3, act of March 3, 1875 (18 Stat. L., 370).* It shall be the duty of the head of each Executive Department or other Government establishment in the city of Washington to submit to the first regular session of the Fifty-fourth Congress, and annually thereafter, in the Annual Book of Estimates, a statement as to the condition of business in his Department or other Government establishment, showing whether any part of the same is in arrears, and, if so, in what divisions of the respective bureaus and offices of his Department or other Government establishment such arrears exist, the extent thereof, and the reasons therefor, and also a statement of the number and compensation of employees appropriated for in one bureau or office who have been detailed to another bureau or office for a period exceeding one year.<sup>1</sup> *Sec. 7, act of March 2, 1895 (28 Stat. L., 808).*

49. The head of each Department shall make an annual report to Congress of the names of the clerks and other persons that have been employed in his Department and the offices thereof; stating the time that each clerk or other person was actually employed, and the sums paid to each; also, whether they have been usefully employed; whether the services of any of them can be dispensed with without

Annual estimates. Statement of condition of business to be submitted.

Sec. 3, act of Mar. 3, 1875, v. 18, p. 370.

Sec. 7, act of Mar. 2, 1895, v. 28, p. 808.

Report of clerks employed.

Aug. 26, 1842, c. 202, s. 11, v. 5, p. 525.

Sec. 194, R.S.

<sup>1</sup>See, also, in connection with the preparation and submission of annual estimates, paragraphs 166-174 post.

detriment to the public service, and whether the removal of any individuals, and the appointment of others in their stead, is required for the better dispatch of business.

Time of making annual reports.

See all acts requiring reports.

Sec. 195, R. S.

Department reports, when to be furnished to printer.

June 25, 1864, c. 155, ss. 1, 3, v. 13, pp. 184, 5; June 22, 1870, c. 150, s. 12, v. 16, p. 164.

Sec. 196, R. S.

Inventories of property.

July 15, 1870, c. 300, s. 1, v. 16, p. 364; Feb. 27, 1877, c. 69, v. 19, p. 241.

Sec. 197, R. S.

Biennial lists of employees to be filed in Interior Department.

Apr. 27, 1816, Res. No. 6, s. 1, v. 3, p. 342; Mar. 3, 1851, c. 32, s. 1, v. 9, p. 600; July 14, 1832, Res. No. 11, v. 4, p. 608; Dec. 15, 1877, v. 20, p. 13.

Sec. 198, R. S.

Report to Congress, in annual estimates, of buildings rented, etc.

Mar. 3, 1883, v. 22, p. 552.

Report of number of employees who are below a fair standard of efficiency.

Sec. 2, July 11, 1890, v. 26, p. 268.

50. Except where a different time is expressly prescribed by law, the various annual reports required to be submitted to Congress by the heads of Departments shall be made at the commencement of each regular session, and shall embrace the transactions of the preceding year.

51. The head of each Department, except the Department of Justice, shall furnish to the Congressional Printer copies of the documents usually accompanying his annual report, on or before the first day of November in each year, and a copy of his annual report on or before the third Monday of November in each year.

52. The Secretary of State, the Secretary of the Treasury, the Secretary of the Interior, the Secretary of War, the Secretary of the Navy, the Postmaster-General, the Attorney-General, and Commissioner of Agriculture shall keep, in proper books, a complete inventory of all the property belonging to the United States in the buildings, rooms, offices, and grounds occupied by them, respectively, and under their charge, adding thereto, from time to time, an account of such property as may be procured subsequently to the taking of such inventory, as well as an account of the sale or other disposition of any of such property, except supplies of stationery and fuel in the public offices and books, pamphlets, and papers in the Library of Congress.

53. The head of each Department shall, as soon as practicable after the last day in June in each year in which a new Congress is to assemble, cause to be filed in the Department of the Interior a full and complete list of all officers, agents, clerks, and employees employed in his Department, or in any of the offices or Bureaus connected therewith. He shall include in such list all the statistics peculiar to his Department required to enable the Secretary of the Interior to prepare the Biennial Register.

54. It shall be the duty of the heads of the several Executive Departments to submit to Congress each year, in the annual estimates of appropriations, a statement of the number of buildings rented by their respective Departments, the purposes for which rented, and the annual rental of each. *Act of March 3, 1883 (22 Stat. L., 552).*

55. It shall be the duty of the heads of the several Executive Departments of the Government to report to Congress each year in the annual estimates the number of employees in each bureau and office and the salaries of each who are below a fair standard of efficiency. *Sec. 2, act of July 11, 1890 (26 Stat. L., 268).*

## MISCELLANEOUS PROVISIONS.

56. That all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes; and any such officer or employee, who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars. *Sec. 6, act of August 15, 1876 (19 Stat. L., 169).*

Requesting, etc., contributions by officers of Government for political purposes prohibited. Sec. 6, Aug. 15, 1876, v. 19, p. 169

57. That hereafter no building owned, or used for public purposes, by the Government of the United States, shall be draped in mourning and no part of the public fund shall be used for such purpose. *Sec. 3, act of March 3, 1893 (27 Stat. L., 715).*

Draping public buildings in mourning prohibited. Sec. 3, Mar. 3, 1893, v. 27, p. 715.

58. That hereafter the Executive Departments of the Government shall not be closed as a mark to the memory of any deceased ex-official of the United States. *Sec. 4, act of March 3, 1893 (27 Stat. L., 715).*

Closing Departments for deceased ex-officials prohibited. Sec. 4, Mar. 3, 1893, v. 27, p. 715.

59. That the Secretaries, respectively, of the Departments of State, of the Treasury, War, Navy, and of the Interior, and the Attorney-General, are authorized to make requisitions upon the Postmaster-General for the necessary amount of official postage stamps for the use of their Departments, not exceeding the amount stated in the estimates submitted to Congress; and upon presentation of proper vouchers therefor at the Treasury, the amount thereof shall be credited to the appropriation for the service of the Post-Office Department for the same fiscal year.<sup>1</sup> *Sec. 2, act of March 3, 1883 (22 Stat. L., 563).*

Official postage stamps for departmental use. Sec. 2, Mar. 3, 1883, v. 22, p. 563.

60. And it shall be the duty of the respective Departments to inclose to Senators, Representatives, and Delegates in Congress, in all official communications requiring answers, or to be forwarded to others, penalty envelopes addressed as far as practicable, for forwarding or answering such official correspondence.<sup>1</sup> *Sec. 2, act of March 3, 1883 (22 Stat. L., 563).*

Penalty envelopes for inclosure of answers to official communications. Sec. 2, *ibid.*

61. Hereafter no contract shall be made for the rent of any building, or part of any building, in Washington, not now in use by the Government, to be used for the purposes of the Government until an appropriation therefor shall have been made in terms by Congress. *Act of June 22, 1874 (18 Stat. L., 144).*

No contracts to be made for rent of any building in Washington without appropriation therefor, etc. June 22, 1874, v. 18, p. 144.

<sup>1</sup>For provisions of statutes relating to the free transmission of official mail matter see Chapter VI, THE POST-OFFICE DEPARTMENT.



# CHAPTER III.

## THE DEPARTMENT OF WAR.

Par.	Par.
62. Establishment of the Department of War.	73. Affidavits may be received in settlement of accounts of company commanders for clothing, etc.
63. Assistant Secretary of War to be appointed.	74. Power to administer oaths.
64. Subordinate officers.	75. Surplus charts may be sold.
65. Chief clerk.	76. Surplus maps and publications of Signal Office may be sold.
66. Management of military affairs.	77. Report of unexpended balances.
67. Custody of departmental records and property.	78. Annual statement of expenditures of appropriation for contingent expenses.
68. Collecting flags.	79. Report of bids for works.
69. Purchase and transportation of supplies.	80. Report of examinations of river and harbor improvements.
70. Transportation of troops.	81. Returns of the militia.
71. Construction of new lines of telegraph.	82. Assignment of rooms in State, War, and Navy building.
72. Loss of certificate of discharge.	82 <sup>a</sup> . Disposition of useless papers.

Establishment of the Department of War.  
Sec. 214, R. S.

Assistant Secretary of War to be appointed.  
Mar. 5, 1890, v. 20, p. 17.

Salary.

Duties.

62. There shall be at the seat of Government an Executive Department to be known as the Department of War, and a Secretary of War, who shall be the head thereof.<sup>1</sup>

63. There shall be in the Department of War an Assistant Secretary of War, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand five hundred dollars a year, payable monthly, and who shall perform such duties in the Department of War as shall be prescribed by the Secretary or may be required by law.<sup>2</sup> *Act March 5, 1890 (26 Stat. L., 17).*

<sup>1</sup> The Department of War and the office of Secretary of War were created by the act of August 7, 1789 (1 Stat. L., 49). The Secretary of War succeeded to the office and functions of the Secretary at War, whose powers and duties were defined in an ordinance of Congress dated January 27, 1785 (1 Stat. L., 49, note b). The office of Secretary of War included that of Secretary of the Navy until April 30, 1798, when the Department of the Navy was established, and so much of the act of August 7, 1789, as imposed duties upon the Secretary of War in connection therewith was repealed (1 Stat. L., 553). For statutory provisions respecting a temporary vacancy in the office of Secretary of War see paragraphs 7 to 14, ante.

<sup>2</sup> The act of August 5, 1882, authorizing the appointment of an Assistant Secretary of War was repealed by the act of July 7, 1884 (23 Stat. L., 331), the power conferred by the act of August 5, 1882, never having been exercised. In the case of *Ryan v. U. S.*, 136 U. S., 18, 80, it was held that the authority vested in the Secretary of War could in his absence be exercised by the officer who under the law became for the time acting Secretary of War.

**64.** There shall be in the Department of War:

One chief clerk of the Department, at a salary of two thousand five hundred dollars a year.<sup>1</sup>

One disbursing clerk.

[One superintendent of the War Department building, at a salary of two hundred and fifty dollars a year.]<sup>2</sup>

In the office of the Adjutant-General:

One chief clerk, at a salary of two thousand dollars a year.

In the office of the Quartermaster-General:

One chief clerk, at a salary of two thousand dollars a year.

[One superintendent of the building, at a salary of two hundred dollars a year. (*See secs. 169, 173, 174, 176, R. S.*)]<sup>2</sup>

In the office of the Paymaster-General:

One chief clerk, at a salary of two thousand dollars a year.

[One superintendent of the building occupied by the Paymaster-General, at a salary of two hundred and fifty dollars a year.]<sup>2</sup>

In the office of the Commissary-General:

One chief clerk, at a salary of two thousand dollars a year.

[One superintendent of building at corner of Seventeenth and F streets, at a salary of two hundred and fifty dollars a year.]<sup>2</sup>

In the office of the Surgeon-General:

One chief clerk, at a salary of two thousand dollars a year.

In the office of the Chief of Engineers:

One chief clerk, at a salary of two thousand dollars a year.

In the office of the Chief of Ordnance:

One chief clerk, at a salary of two thousand dollars a year.

In the office of Military Justice:

One chief clerk, at a salary of two thousand dollars a year.

**65.** There shall be in the said Department an inferior officer, to be appointed by the said principal officer to be employed therein as he shall deem proper, and to be called

Subordinate of-  
ficers.

Mar. 3, 1853, v.  
10, p. 211.

Sec. 215, R. S.

Chief clerk.  
Feb. 27, 1877, v.  
19, p. 241.

<sup>1</sup>The present composition of the clerical force of the War Department proper is as follows: One chief clerk, \$2,500; 1 disbursing clerk, \$2,000; 3 chiefs of division, at \$2,000 each; 1 stenographer, \$1,800; 5 clerks of class 4; clerk to Assistant Secretary, \$1,800; 5 clerks of class 3; 9 clerks of class 2; 12 clerks of class 1; 4 clerks, at \$1,000 each; 4 messengers; 7 assistant messengers; 8 laborers; 1 carpenter and foreman of laborers, at \$1,000 each; 2 carpenters, at \$900 each; 1 hostler, \$600; 2 hostlers and 1 watchman, at \$540 each. Act of May 28, 1896 (29 Stat. L., 161).

<sup>2</sup>The offices included in brackets have ceased to exist.

the chief clerk in the Department of War, and who, whenever the said principal officer shall be removed from office by the President of the United States, or in any other case of vacancy, shall, during such vacancy, have the charge and custody of all records, books, and papers appertaining to the said Department.<sup>1</sup> *Act of February 27, 1877 (19 Stat. L., 241).*

Management of military affairs.

Aug. 7, 1789, c. 7, s. 1, v. 1, p. 49.

Sec. 216, R. S.

66. The Secretary of War shall perform such duties as shall from time to time be enjoined on or intrusted to him by the President relative to military commissions, the military forces, the warlike stores of the United States, or to other matters respecting military affairs; and he shall conduct the business of the Department in such manner as the President shall direct.<sup>2</sup> (*See secs. 3660-3665, 3669, R. S.*)

Custody of the departmental records and property.

Aug. 7, 1789, c. 7, ss. 2, 4, v. 1, p. 50.

Sec. 217, R. S.

Collecting flags, etc.

Apr. 18, 1814, c. 78, s. 1, v. 3, p. 133.

Sec. 218, R. S.

Purchase and transportation of supplies.

Mar. 3, 1813, c. 48, s. 5, v. 2, p. 817.

Sec. 219, R. S.

67. The Secretary of War shall have the custody and charge of all the books, records, papers, furniture, fixtures, and other property appertaining to the Department.

68. The Secretary of War shall from time to time cause to be collected and transmitted to him, at the seat of Government, all such flags, standards, and colors as are taken by the Army from the enemies of the United States.

69. The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster Departments of the Army, and the duties and powers

<sup>1</sup> See paragraphs 15-17 and 34 for the general powers and duties of chief clerks.

<sup>2</sup> The Secretary of War is the regular constitutional organ of the President for the administration of the military establishment of the nation; and rules and orders publicly promulgated through him must be received as the acts of the Executive and, as such, be binding upon all within the sphere of his legal and constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise or mistaken. The right of so considering and treating the authority of the Executive, vested as it is with the command of the military and naval forces, could not be intrusted to officers of any grade inferior to the Commander in Chief; its consequence, if tolerated, would be a complete disorganization of both the Army and Navy. *U. S. v. Eliason*, 16 Pet., 291, 302; *Wilcox v. Jackson*, 13 Pet., 498, 513; *Wolsey v. Chapman*, 101 U. S., 755; *Runkle v. U. S.*, 122 U. S., 543, 557; *U. S. v. Adams*, 7 Wall., 463. The Secretary of War is not required to perform duties in the field. He does not compose any part of the Army, and has no service to perform that may not be done at the seat of Government. 1 Opin. Att. Gen., 457; *U. S. v. Burns*, 12 Wall, 246; see, also, note 2 to par. 5, and the title *Bridges over the navigable waters of the United States*, in the chapter entitled THE CORPS OF ENGINEERS.

*Duties imposed by statute.*—In addition to his duties as the constitutional organ of the President for the administration of the military establishment, the Secretary of War is, by other statutes, charged with the supervision of the administration of the several bureaus or offices of the War Department, their estimates, contracts, expenditures, reports and returns being under his sole direction and control. He has also been charged, from time to time, with the execution of laws relating to national cemeteries, the Soldiers' Home, the National Home for Disabled Volunteer Soldiers, the Military Prison, the detail of officers to colleges, the distribution of relief to sufferers by fire, flood, or by the failure of crops, due to drought or other causes, the construction and operation of canals, roads, and lines of telegraph, the location and construction of bridges over the navigable waters of the United States, of railroads through the public lands, the protection of settlers and emigrants, the establishment of harbor lines, the adjustment of claims, the establishment and maintenance of national military parks, and the location, marking, and preservation of lines of battle on the battlefields of the civil war. Since the act of June 28, 1864, all statutes authorizing the construction of works of river and harbor improvement have contained the provision that the sums appropriated shall be expended under his direction. The Military Academy, and the schools of application at Willets Point, Fortress Monroe, and at Forts Leavenworth and Riley are also carried on under the immediate supervision of the Secretary of War. By the act of April 10, 1878, the Secretary of War is authorized to prescribe rules and regulations to be observed in the preparation, submission, and opening of bids for contracts under the War Department. See also pars. 5 and 6, and notes thereunder for general provisions respecting the powers and duties of the heads of the several Executive Departments.

thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations be intrusted with the same; and shall fix and make reasonable allowances for the store rent and storage necessary for the safe-keeping of all military stores and supplies.

70. The transportation of troops, munitions of war, equipments, military property, and stores, throughout the United States, shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint.

Transportation of troops, etc.  
Jan. 31, 1862, c. 15, s. 4, v. 12, p. 334.  
Sec. 220, R. S.

71. That the construction of new lines of telegraph shall be under the supervision and direction of the several military commanders, subject to the approval of the Secretary of War.<sup>1</sup> *Act of June 20, 1878 (20 Stat. L., 219).*

Construction of new lines of telegraph, etc.  
June 20, 1878, v. 20, p. 219.

72. Whenever satisfactory proof is furnished to the War Department that any non-commissioned officer or private soldier who served in the Army of the United States in the late war against the rebellion has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish, on request, to such non-commissioned officer or private a duplicate of such certificate of discharge, to be indelibly marked, so that it may be known as a duplicate; but such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.

Loss of certificate of discharge.  
Mar. 3, 1873, c. 248, s. 1, v. 17, p. 582.  
Sec. 224, R. S.

73. In settling the accounts of the commanding officer of a company for clothing and other military supplies, the affidavit of any such officer may be received to show the loss of vouchers or company books, or any matter of circumstance tending to prove that any apparent deficiency was occasioned by unavoidable accident or lost in actual

Affidavits may be received in settlement of accounts of company commanders for clothing, etc.  
Feb. 27, 1877, v. 19, p. 241.  
Sec. 224, R. S.

<sup>1</sup>The act of October 1, 1890, provides that "the civilian duties now performed by the Signal Corps of the Army shall hereafter devolve upon a bureau, which, on or after July first, eighteen hundred and ninety-one, shall be established in the Department of Agriculture, and the Signal Corps of the Army shall remain a part of the military establishment, under the direction of the Secretary of War, and all estimates for its support shall be included with other estimates for the support of the military establishment." Vol. 26, Stat. L., ch. 1266, p. 653. This statute operates to repeal so much of sections 221, 222, and 223 of the Revised Statutes as imposed duties upon the Secretary of War and the Chief Signal Officer in connection with the observation and report of storms, leaving under their direction such duties, in connection with the construction and repair of military telegraph lines as were imposed by the acts of March 3, 1875, 18 Stat. L., p. 388; and June 20, 1878, 20 Stat. L., p. 219. See chapter entitled THE SIGNAL DEPARTMENT, post.



service, without any fault on his part, or that the whole or any part of such clothing and supplies had been properly and legally used and appropriated; and such affidavit may be considered as evidence to establish the facts set forth, with or without other evidence, as may seem to the Secretary of War just and proper under the circumstances of the case.

Power to administer oaths.

Mar. 3, 1865, c. 79, s. 25, v. 13, p. 491.

Sec. 225, R. S.

74. The Secretary of War is authorized to detail one or more of the employees of the War Department for the purpose of administering the oaths required by law in the settlement of officers' accounts for clothing, camp and garrison equipage, quartermaster's stores, and ordnance, which oaths shall be administered without expense to the parties taking them.

Surplus charts may be sold.

Mar. 3, 1869, c. 122, s. 1, v. 15, pp. 301, 303.

Sec. 226, R. S.

Surplus maps and publications of Signal Office may be sold.

Mar. 3, 1873, c. 227, v. 17, p. 510 (527).

Sec. 227, R. S.

75. Any surplus charts of the northwestern lakes may be sold to navigators upon such terms as the Secretary of War may prescribe.

76. The Chief Signal-Officer may cause to be sold any surplus maps or publications of the Signal-Office, the money received therefor to be applied toward defraying the expenses of the signal-service; and an account of the same shall be rendered in each annual report of the Chief of the Signal-Service.<sup>1</sup>

#### REPORTS.

Report of unexpended balances.

May 1, 1820, c. 52, s. 2, v. 3, p. 567; Apr. 20, 1874, c. 117, s. 2, v. 18, p. 33.

Sec. 228, R. S.

77. The Secretary of War shall make an annual report to Congress containing a statement of the appropriations of the preceding fiscal year for the Department of War, showing the amount appropriated under each specific head of appropriation, the amount expended under each head, and the balance which, on the thirtieth day of June preceding such report, remained unexpended. Such reports shall be accompanied by estimates of the probable demands which may remain on each appropriation.<sup>2</sup>

Annual statement of expenditure of appropriation for contingent expenses.

Mar. 3, 1869, c. 28, s. 5, v. 2, p. 536.

Sec. 229, R. S.

78. The Secretary of War shall lay before Congress, at the commencement of each regular session, a statement of \* \* \* the expenditure of the moneys appropriated for the contingent expenses of the military establishment.<sup>3</sup>

Report of bids for works.

June 23, 1866, c. 138, s. 14, v. 14, p. 73.

Sec. 230, R. S.

79. Whenever the Secretary of War invites proposals for any works, or for any materials or labor for any work, he

<sup>1</sup> See note 1 to par. 71.

<sup>2</sup> See title *Annual Reports* in chapter entitled PROVISIONS APPLICABLE TO THE SEVERAL EXECUTIVE DEPARTMENTS.

<sup>3</sup> The act of March 2, 1895, repeals so much of this paragraph as requires the Secretary of War to lay before Congress, at the commencement of each regular session, a statement of all contracts for supplies and services which have been made by him or under his supervision during the year preceding. 28 Stat. L., 787.

shall report to Congress, at its next session, all bids therefor, with the names of the bidders.

80. The Secretary of War shall cause to be prepared and submitted to Congress, in connection with the reports of examinations and surveys of rivers and harbors hereafter made by order of Congress, full statements of all existing facts tending to show to what extent the general commerce of the country will be promoted by the several works of improvements contemplated by such examinations and surveys, to the end that public moneys shall not be applied excepting where such improvements shall tend to subserve the general commercial and navigation interests of the United States.

Report of examinations of river and harbor improvements.  
July 27, 1868,  
Res. No. 76, v. 15,  
p. 262.  
Sec. 231, R. S.

81. The Secretary of War shall lay before Congress, on or before the first Monday in February of each year, an abstract of the returns of the adjutants-general of the several States of the militia thereof.<sup>1</sup>

Returns of the militia.  
Sec. 232, R. S.

#### THE WAR DEPARTMENT BUILDING.

82. The fourth story and attic of the south wing of the State, War, and Navy building, except such portion as is now within the Library of the State Department, are assigned to the War Department for such uses of the Department as in the judgment of the Secretary of War they may be best fitted, and the sum of one thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money not otherwise appropriated, to be expended under the direction of the Secretary of State to enable the Department to remove from said fourth story and attic the records, documents, and papers, now stored there, and to re-arrange them in other rooms in said Department. That the partition wall separating the corridors of the first, second, third, and fourth stories of the East wing from the said stories of the South wing of the State, War, and Navy building shall be removed so as to afford easy access from one wing to the other on the aforementioned floors of said building: *Provided*, That a joint select committee of three members of the House of Representatives and three Senators, to be appointed respectively by the Speaker of the House and the President of the Senate, upon the passage of this act, shall, on or before the completion of the North wing of the State, War, and

Assignment of rooms, etc., of State, War, and Navy building.  
Sec. 6, Aug. 5,  
1882; v. 22, p. 256.

<sup>1</sup>See chapter entitled THE MILITIA. For statute requiring a report of the names, compensation, etc., of civil engineers employed on works of river and harbor improvement, to be rendered to Congress, annually, by the Secretary of War, see the chapter entitled THE ENGINEER DEPARTMENT.

Navy building, make examination of said building and set apart such portions thereof for the use and occupancy of the State, War, and Navy Departments respectively as in their judgment the best interests of the public service and the needs of said departments respectively may require and upon filing an agreed statement of such partition by said joint select committee in triplicate with the respective Secretaries of such departments the building shall be occupied as therein provided as soon thereafter as practicable.<sup>1</sup> *Sec. 6, act of August 5, 1882 (22 Stat. L., 256).*

Detail of officer of Engineer Corps as superintendent, authorized.

Commission to have supervision, etc.  
March 3, 1883,  
v. 22, p. 553.

The President is hereby authorized and directed to designate from the Engineer Corps of the Army or the Navy, an officer well qualified for the purpose, who shall be detailed to act as superintendent of the completed portions of the State, War, and Navy Department building, under direction of the Secretaries of State, War, and Navy, who are hereby constituted a commission for the purposes of the care and supervision of said building, as hereinafter specified. Said officer shall have charge of said building, and all the engines, machinery, steam and water supply, heating, lighting, and ventilating apparatus, elevators, and all other fixtures in said building, and all necessary repairs and alterations thereof, as well as the direction and control of such force of engineers, watchmen, laborers, and others engaged about the building or the apparatus under his supervision; of the cleaning of the corridors and water closets; of the approaches, side-walks, lawns, court-yards, and areas of the building, and of all rooms in the sub-basement which contain the boilers and other machinery, or so much of said rooms as may be indispensable to the proper performance of his duties as herein provided. *Act of March 3, 1883 (22 Stat. L., 553).*

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<sup>1</sup>DISPOSITION OF USELESS PAPERS.

For statutes regulating the disposition of useless papers, etc., in the several Executive Departments, see the acts of February 16, 1889 (25 Stat. L., 672), and March 2, 1895 (28 Stat. L., 933).

## CHAPTER IV.

### PROVISIONS APPLICABLE TO SEVERAL CLASSES OF OFFICERS.

- | Par.   | Par.  |
|--|---|
| 83. President to regulate admissions to the civil service.   | 98. Soliciting contributions for political purposes forbidden.                          |
| 84. Preference of persons disabled in military or naval service.   | 99. Change of rank or compensation.   |
| 85. Recommendation for employment of such persons.   | 100. Political contributions forbidden.   |
| 86. Preference in reductions.  | 101. Penalty for violation of preceding sections.                                       |
| 87. Appointment of Commissioners, removals, salaries, and traveling expenses.  | 102. Applications for examination to be accompanied by certificate of residence.        |
| 88. Duties of Commissioners: Competitive examinations, vacancies, how filled, apportionment, applications for examination, probation, political contributions, coercion, noncompetitive examinations, notice of changes, exceptions to rules, regulations for examinations, investigations, etc. | 103. Preceding section not to apply to persons already in service.                      |
| 89. Chief examiner, secretary, boards of examiners.  | 104. Official oaths.  |
| 90. Accommodations for Commission.   | 105. Not to affect existing rights, etc.  |
| 91. Frauds.  | 106. Oath for certain persons.  |
| 92. Customs classification; post-office classification.  | 107. Who to administer oath.  |
| 93. Examination required for appointment and promotion; preference claimants; exclusions.  | 108. Custody of oath.   |
| 94. Persons using intoxicating beverages ineligible to appointment.  | 109. Unauthorized office, no salary for.  |
| 95. Members of a family.   | 110. No salaries to certain appointees to fill vacancies during recess of the Senate.   |
| 96. Recommendation by Members of Congress.   | 111. Salaries to officers improperly holding over.                                      |
| 97. Political assessments.   | 112. Holding offices by persons receiving \$2,500 forbidden; retired officers excepted. |
|  | 113. Extra services, no compensation for, except expressly authorized by law.           |
|  | 114. Extra allowances.  |
|  | 115. Pay of officer in arrears to be withheld.  |
|  | 116. Commissions.   |
|  | 117. Notifications of appointments to Secretary of Treasury.                            |

Par.

- 118. Notifications of nominations, rejections, etc., to Secretary of Treasury.
- 119. Removal of office.
- 120. Preservation of copies of Statutes at Large.
- 121. Taking oaths, acknowledgments, etc.
- 122. Restriction upon payments for newspapers.
- 123. Failure to make returns or reports.
- 124. Prohibition upon taking consideration for procuring contracts, offices, etc.

Par.

- 125. Prohibition upon taking compensation for services in matters to which the United States is a party.
- 126. Persons interested not to act as agents for the Government.
- 127. Prohibition of contributions, presents, etc., to superiors.
- 128. Giving, requesting, etc., contributions by officers of Government for political purposes.

## THE CIVIL SERVICE.

President to regulate admissions to the civil service.

Mar. 3, 1871, c. 114, s. 9, v. 16, p. 514.

Sec. 1753, R. S.

**83.** The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of the service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service.<sup>1</sup>

Preference of persons disabled in military or naval service.

Mar. 3, 1865, Res. No. 27, s. 1, v. 13, p. 571.

Sec. 1754, R. S.

**84.** Persons honorably discharged from the military or naval service by reason of disability resulting from wounds or sickness incurred in the line of duty, shall be preferred for appointments to civil offices, provided they are found to possess the business capacity necessary for the proper discharge of the duties of such offices.

Recommendation for employment of such persons.

Mar. 3, 1895, Res. No. 27, s. 2, v. 13, p. 571.

Sec. 1755, R. S.

**85.** In grateful recognition of the services, sacrifices, and sufferings of persons honorably discharged from the military and naval service of the country, by reason of wounds, disease, or the expiration of terms of enlistment, it is respectfully recommended to bankers, merchants, manufacturers, mechanics, farmers, and persons engaged in industrial pursuits, to give them the preference for appointments to remunerative situations and employments.

Preference in reductions.

Aug. 15, 1876, v. 19, p. 169.

**86.** In making any reduction of force in any of the Executive Departments, the head of such Department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval

<sup>1</sup> See the title *The Civil Service Law*, post.

service of the United States, and the widows and orphans of deceased soldiers and sailors. *Act of August 15, 1876* (19 Stat. L., 169).

#### THE CIVIL SERVICE LAW.

87. That the President is authorized to appoint, by and with the advice and consent of the Senate, three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

Appointment of Commissioners.  
Jan. 16, 1883, v. 22, p. 403.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

Removal of Commissioners.

The commissioners shall each receive a salary of three thousand five hundred dollars a year. And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner. *Act of January 16, 1883* (22 Stat. L., 403).

Salaries and traveling expenses.

88. That it shall be the duty of said commissioners:

*First.* To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the Departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.<sup>1</sup>

Duties of Commissioners.  
Rules.  
Sec. 2, *ibid.*

<sup>1</sup> Under the authority conferred by this section the following rules have been prepared and issued by the President:

#### CIVIL SERVICE RULES.

(Revised May 6, 1896.)

#### SYNOPSIS OF RULES.

RULE I. Regulations to be prescribed; definition of terms.

RULE II. Penalties and prohibitions; status of persons after their positions are classified.

RULE III. Extent of each of the five branches of the classified service; employees excluded from the classified service.

RULE IV. Examinations authorized; when noncompetitive examinations may be held; appointment and duties of boards of examiners; executive officers to facilitate examinations.

RULE V. Restrictions governing applicants and applications; disqualifications of applicants and eligibles; age limitations of applicants.

RULE VI. Exceptions from examination.

RULE VII. Rating of examination papers; relative standing of eligibles; relative standing of preference claimants; registration of applicants; term of eligibility.

RULE VIII. Certifications and selections for filling vacancies; revocation of appointments of eligibles not entitled to certification; probationary period and absolute appointment; objection by appointing officer to eligible; apportionment of appointments in Washington, D. C.; to what class appointment must be made;

*Second.* And, among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

Competitive examinations.

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Vacancies, how filled.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by

eligibles with same average percentage; districts to be formed for filling vacancies in certain positions; appointment and promotion of substitutes; temporary or emergency appointments.

RULE IX. Reinstatements.

RULE X. Transfers.

RULE XI. Promotions.

RULE XII. List of all positions and employments and reports of changes in service to be furnished to Commission.

Promulgating order.

In the exercise of power vested in him by the Constitution, and of authority given to him by the seventeen hundred and fifty-third section of the Revised Statutes, and by an act to regulate and improve the civil service of the United States, approved January 16, 1883, the President hereby makes and promulgates the following rules, and revokes all others.

#### RULE I.

Commission to prescribe regulations.

1. The United States Civil Service Commission shall have authority to prescribe regulations in pursuance of, and for the execution of, the provisions of these rules and of the civil-service act.

Definitions of terms.

2. The several terms hereinafter mentioned, wherever used in these rules or the regulations of the Commission, shall be construed as follows:

(a) The term "Civil Service Act" refers to "An act to regulate and improve the civil service of the United States," approved January 16, 1883.

(b) The term "Classified Service" refers to all that part of the executive civil service of the United States included within the provisions of the civil-service act.

(c) The term "Grade," in connection with employees or positions, refers to a group of employees or positions in the Classified Service arranged upon the basis of duties performed without regard to salaries received.

(d) The term "Class," in connection with employees or positions, refers to a group of employees or positions in any grade arranged upon the basis of salaries received, in pursuance of the provisions of section 163 of the Revised Statutes and of section 6 of the civil-service act.

(e) The term "Excepted position" refers to any position within the provisions of the civil-service act, but excepted from the requirement of competitive examination or registration for appointment thereto.

#### RULE II.

Dismissal for violation of act or rules.

1. Any person in the executive civil service of the United States who shall willfully violate any of the provisions of the civil-service act or of these rules shall be dismissed from office.

No interference with elections.

2. No person in the executive civil service shall use his official authority or official influence for the purpose of interfering with an election or controlling the result thereof.

No dismissal or change of rank for political or religious opinions.

3. No person in the executive civil service shall dismiss, or cause to be dismissed, or make any attempt to procure the dismissal of, or in any manner change the official rank or compensation of any other person therein because of his political or religious opinions or affiliations.

No disclosures of political or religious opinions of applicants, etc.

4. No question in any examination, or form of application, shall be so framed as to elicit information concerning, nor shall any inquiry be made concerning, nor any other attempt be made to ascertain, the political or religious opinions or affiliations of any applicant, competitor, or eligible; and all disclosures thereof shall be discontinued. And no discrimination shall be exercised, threatened, or promised, against or in favor of, any applicant, competitor, or eligible because of his political or religious opinions or affiliations.

Recommendations that can not be received, filed, or considered.

5. No recommendation of an applicant, competitor, or eligible, involving any disclosure of his political or religious opinions or affiliations, shall be received, filed, or considered by the Commission, by any board of examiners, or by any nominating or appointing officer.

Penalties like in character.

6. In making removals or reductions, or in imposing punishment, for delinquency or misconduct, penalties like in character shall be imposed for like offenses, and

selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been a resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

action thereupon shall be taken irrespective of the political or religious opinions or affiliations of the offenders.

7. A person holding a position on the date said position is classified under the civil-service act shall be entitled to all the rights and benefits possessed by persons of the same class or grade appointed upon examination under the provisions of said act.

### RULE III.

1. All that part of the executive civil service of the United States which has been, or may hereafter be, classified under the civil-service act shall be arranged in branches as follows: The departmental service, the custom-house service, the Post-Office service, the Government Printing service, and the Internal Revenue Service.

2. The departmental service shall include officers and employees as follows, except those in the service of the Government Printing Office and in the service of the several custom-houses, post-offices, and internal-revenue districts.

(a) All officers and employees of whatever designation, except persons merely employed as laborers or workmen and persons who have been nominated for confirmation by the Senate, however or for whatever purpose employed, whether compensated by a fixed salary, or otherwise, who are serving in, or on detail from—

The several Executive Departments, the commissions, and offices, in the District of Columbia.

The Railway Mail Service.

The Indian Service.

The several pension agencies.

The Steamboat-Inspection Service.

The Marine-Hospital Service.

The Light-House Service.

The Life-Saving Service.

The several mints and assay offices.

The Revenue-Cutter Service.

The force employed under custodians of public buildings.

The several subtreasuries.

The Engineer Department at large.

(b) All executive officers and employees outside of the District of Columbia not covered in (a), of whatever designation, whether compensated by a fixed salary, or otherwise—

Who are serving in a clerical capacity, or whose duties are in whole or in part of a clerical nature.

Who are serving in the capacity of watchman or messenger.

Who are serving in the capacity of physician, hospital steward, nurse, or whose duties are of a medical nature.

Who are serving in the capacity of draftsman, civil engineer, steam engineer, electrical engineer, computer, or fireman.

Who are in the service of the Supervising Architect's Office in the capacity of superintendent of construction, superintendent of repair, or foreman.

Who are in the service of the Treasury Department in any capacity.

3. The custom-house service shall include the officers and employees serving in any customs district, whose employees number as many as five, who have been, or tom-house service hereafter be, classified under the civil-service act. And whenever in any

customs district whose officers and employees number less than five the number of officers and employees shall be increased to as many as five, the Secretary of the Treasury shall at once notify the Commission of such increase, and the officers and employees in said district shall be included within the classified service from the date of said increase.

4. The Post Office service shall include the officers and employees in any free-delivery post-office who have been, or may hereafter be, classified under the civil-service act. And whenever the free-delivery system shall be established in any post-office the Postmaster-General shall at once notify the Commission of such establishment and the officers or employees of said office shall be included within



Political contributions and service.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Coercion.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Noncompetitive examinations.

Seventh, there shall be non-competitive examinations in all proper cases before the Commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Notice of changes in service.

Eighth, that notice shall be given in writing by the appointing power to said Commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said Commission.

Exceptions to rules.

And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the Commission.

Consolidation of post-offices.

the classified service from the date of such establishment; and whenever, by order of the Postmaster-General, any post-office shall be consolidated with, and made a part of, a free-delivery post-office, the Postmaster-General shall at once notify the Commission of such consolidation, and from the date of said order the employees of the office thus made a part of the free delivery office whose names appear on the roster of the Post-Office Department shall be employees of said free-delivery office, and the person holding, on the date of said order, the position of postmaster at the office thus made a part of said free-delivery office may be made an employee in said free delivery office and may at the time of classification be assigned to any position therein and given any appropriate designation which the Postmaster-General may direct.

Extent of Government Printing service.

5. The Government Printing Service shall include the officers and employees in the Government Printing Office, who have been, or may hereafter be, classified under the civil-service act.

Extent of Internal Revenue Service.

6. The Internal Revenue Service shall include the officers and employees who have been, or may hereafter be, classified under the civil-service act in any internal-revenue district.

Employees already classified covered by rules.

7. All officers and employees who have heretofore been classified under the civil-service act shall be considered as still classified and subject to the provisions of these rules.

Employees and positions not covered by rules.

8. The following-mentioned positions or employees shall not be subject to the provisions of these rules:

(a) Any position filled by a person whose place of private business is conveniently located for his performance of the duties of said position, or any position filled by a person remunerated in one sum both for services rendered therein, and for necessary rent, fuel, and lights furnished for the performance of the duties thereof: *Provided*, That in either case the performance of the duties of said position requires only a portion of the time and attention of the occupant, paying him a compensation not exceeding, for his personal salary only, three hundred dollars per annum, and permitting of his pursuing other regular business or occupation.

(b) Any person in the military or naval service of the United States who is detailed for the performance of civil duties.

(c) Any person employed in a foreign country, under the State Department, or temporarily employed in confidential capacity in a foreign country.

(d) Any position whose duties are of a quasi-military or quasi-naval character and for the performance of whose duties a person is enlisted for a term of years.

#### RULE IV.

Examinations authorized.

1. In pursuance of the provisions of section 2 of the civil-service act, there shall be provided, to test fitness for admission to positions which have been, or may here-

*Third.* Said Commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said Commission shall keep minutes of its own proceedings.

Regulations for examinations.

Minutes of proceedings.

*Fourth.* Said Commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effects of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.

Investigations

*Fifth.* Said Commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations and the exceptions thereto in force, the practical effects thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act. *Sec. 2, act of January 16, 1883 (22 Stat. L., 403).*

Annual report.

89. That said Commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings,

Chief examiner.  
Sec. 3, *ibid.*

after be, classified under the civil-service act, examinations of a practical and suitable character involving such subjects and tests as the Commission may direct.

2. No person shall be appointed to, or be employed in, any position which has been, or may hereafter be, classified under the civil-service act, until he shall have passed the examination provided therefor, or unless he is especially exempt from examination by the provisions of said act or the rules made in pursuance thereof.

Examinations required.

3. In pursuance of the provisions of section 2 of the civil-service act, wherever competent persons can be found who are willing to compete, no noncompetitive examination shall be given except as follows:

When noncompetitive examinations may be held.

(a) To test fitness for transfer or for promotion in a part of the service to which promotion regulations have not been applied.

(b) To test fitness for appointment of Indians as superintendents, teachers, teachers of industries, kindergartners, and physicians in the Indian Service at large.

The noncompetitive examinations of Indians for the positions mentioned shall consist of such tests of fitness, not disapproved by the Commission, as may be determined upon by the Secretary of the Interior. A statement of the result of every noncompetitive test, and all appointments, transfers, or promotions based thereon shall be immediately forwarded to the Commission.

4. In pursuance of the provisions of section 3 of the civil-service act, examinations shall be provided at such places and upon such dates as the Commission shall deem most practicable to subserve the convenience of applicants and the needs of the service.

Dates and places of examinations.

5. In pursuance of the provisions of section 3 of the civil-service act, the Commission shall appoint, from persons in the Government service, such boards of examiners as it may deem necessary. The members of said boards shall perform such duties as the Commission may direct in connection with examinations, appointments, and promotions, in any part of the service which has been, or may hereafter be, classified. The members of any board of examiners in the performance of their duties as such shall be under the direct and sole control and authority of the Commission. The duties performed by the members of any board of examiners in their capacity as such shall be considered part of the duties of the office in which they are serving, and time shall be allowed for the performance of said duties during the office hours of said office. The members of any board of examiners shall not all be adherents of one political party, when persons of other political parties are available and competent to serve upon said board.

Appointment and duties of boards of examiners.

6. In pursuance of the provisions of section 3 of the civil-service act, all executive officers of the United States shall facilitate civil-service examinations; and postmasters, customs officers, internal-revenue officers, and custodians of public buildings at places where such examinations are to be held, shall, for the purpose of such

Executive officers to facilitate examinations.

which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of three thousand dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty.

Secretary. The Commission shall have a secretary, to be appointed by the President, who shall receive a salary of one thousand

examinations, permit and arrange for the use of suitable rooms under their charge and for heating, lighting, and furnishing the same.

#### RULE V.

- Qualifications of applicants.** 1. Every applicant for examination must be a citizen of the United States, must be of proper age, and must make an application under oath, upon a form prescribed by the Commission, and accompanied by such certificates as may be prescribed.
- Applications from enlisted men.** 2. No application for examination shall be accepted from any person serving in the Army, the Navy, or Marine Corps of the United States, unless the written consent of the head of the Department under which said person is enlisted is filed with his application.
- Disqualifications of applicants and eligibles.** 3. The Commission may, in its discretion, refuse to examine an applicant, or to certify an eligible, who is physically so disabled as to be rendered unfit for his performance of the duties of the position to which he seeks appointment; or who has been guilty of a crime or of infamous or notoriously disgraceful conduct; or who has been dismissed from the service for delinquency or misconduct within one year next preceding the date of his application; or who has intentionally made a false statement in any material fact, or practiced or attempted to practice any deception or fraud in securing his registration or appointment. Any of the foregoing disqualifications shall be good cause for the removal of an eligible from the service after his appointment.
- Age limitations for applicants.** 4. No application for examination shall be accepted unless the applicant is within the age limitations fixed herein for entrance to the position to which he seeks to be appointed: *Provided*, That subject to the other conditions of these rules the application of any person whose claim of preference under the provisions of section 1754 of the Revised Statutes has been allowed by the Commission may be accepted without regard to his age. The age limitations for entrance to positions in the different branches of the service shall be as follows:
- No age limitations for preference claimants.**

	Minimum.	Maximum.
<b>DEPARTMENTAL SERVICE:</b>		
Page or messenger boy.....	14	18
Apprentice (or student).....	16	20
Printer's assistant and messenger.....	18	No limit.
Positions in Railway Mail Service.....	18	35
Superintendent, physician, supervisor, day school inspector, and matron, Indian Service.....	25	55
All other positions in the Indian Service.....	21	45
All other positions.....	20	No limit.
(These limitations shall not apply in the case of wives of superintendents of Indian schools who apply for examination for the position of teacher or matron.)		
<b>CUSTOM-HOUSE SERVICE:</b>		
Clerk and messenger.....	20	Do.
Other positions.....	21	Do.
<b>POST-OFFICE SERVICE:</b>		
Letter carrier.....	21	40
Other positions.....	18	No limit.
<b>GOVERNMENT PRINTING SERVICE:</b>		
All positions (male).....	21	Do.
All positions (female).....	18	Do.
<b>INTERNAL REVENUE SERVICE:</b>		
Clerk.....	18	Do.
Other positions.....	21	Do.

- Applications for trade positions.** 5. No application shall be accepted for examination for a position which belongs to one of the recognized mechanical trades unless it shall be shown that the applicant has served as apprentice or as journeyman or as apprentice and journeyman at said trade for such periods as the Commission may prescribe.

#### RULE VI.

- Exceptions from examination or registration.** The following named employees or positions which have been, or may hereafter be, classified under the civil-service act shall be excepted from the requirement of examination or registration:
- DEPARTMENTAL SERVICE:**
- (a) Private secretaries or confidential clerks (not exceeding two) to the President or to the head of each of the eight Executive Departments.
- (b) Indians employed in the Indian Service at large, except those employed as superintendents, teachers, teachers of industries, kindergartners, and physicians.

six hundred dollars per annum. It may, when necessary, employ a stenographer, and a messenger, who shall be paid, when employed, the former at the rate of one thousand six hundred dollars a year, and the latter at the rate of six hundred dollars a year. The Commission shall, at Washington, and in one or more places in each State and

Stenographer  
and messenger.

#### CUSTOM-HOUSE SERVICE:

(a) One cashier in each customs district.

(b) One chief or principal deputy or assistant collector in each customs district whose employees number as many as 150.

#### POST-OFFICE SERVICE:

(a) One assistant postmaster, or chief assistant to the postmaster, of whatever designation, at each post-office.

(b) One cashier of each first-class post-office when employed under the roster title of cashier only.

#### INTERNAL REVENUE SERVICE:

One cashier in each internal-revenue district.

### RULE VII.

1. Examination papers shall be rated on a scale of 100, and the subjects therein shall be given such relative weights as the Commission may prescribe. After a competitor's papers have been rated, he shall be duly notified of the result thereof. Rating examination papers.

2. Every competitor who attains an average percentage of 70 or over shall be eligible for appointment to the position for which he was examined; and the names of age-eligible eligibles shall be entered, in the order of their average percentages, on the proper register of eligibles: *Provided*, That the names of all competitors whose claims to preference under the provisions of section 1754 of the Revised Statutes have been age of preference allowed by the Commission, and who attain an average of 65 or over, shall be claimants.

placed, in the order of their average percentages, at the head of the proper register of eligibles.

3. For filling vacancies in positions for which competitive tests are not practicable, the registration of applicants shall be in the order in which they fulfill the requirements prescribed therefor by regulation of the Commission: *Provided*, That persons who served in the military or naval service of the United States in the late war of the rebellion and were honorably discharged therefrom, and persons who have been separated from such positions above mentioned through no delinquency or misconduct, shall be placed at the head of the proper register in the order of their fulfillment of said requirements. Registration of applicants.

4. The term of eligibility shall be one year from the date on which the name of the eligible is entered upon the register. Term of eligibility.

### RULE VIII.

In pursuance of the provisions of section 2 of the civil-service act, whenever a vacancy occurs in any position which has been, or may hereafter be, classified under the civil-service act, and which is not an excepted position, the filling of said vacancy, unless filled through noncompetitive examination or by reinstatement, transfer, promotion, or reduction, shall be governed as follows: Method of filling vacancies.

1. The appointing or nominating officer shall request certification to him of the names of eligibles for the position vacant, and the Commission shall certify to said officer from the proper register the three names at the head thereof which have not been three times certified to the department or office in which the vacancy exists: Three names to be certified.

*Provided*, That certification for temporary appointment shall not be counted as one of the three certifications to which an eligible is entitled: *And provided further*, That whenever the sex of those whose names are to be certified is fixed by any law, rule, or regulation, or is specified in the request for certification, the names of the

of the sex so fixed or specified shall be certified, but in other cases certification shall be made without regard to sex. Certification by sexes.

2. Of the three names certified the nominating or appointing officer shall select one, and if at the time of selection there are more vacancies than one, he may select more than one name, unless otherwise directed by the Commission. Selections from more than one name, unless otherwise directed by the Commission.

3. If an eligible who is not entitled to certification is certified and appointed, his appointment shall be immediately revoked by the appointing officer upon notification from the Commission. Eligible not entitled to certification.

4. A person selected for appointment shall be notified of his selection by the appointing or nominating officer, and upon his acceptance shall receive from the appointing officer a certificate of appointment for a probationary period of six months, at the end of which period, if the conduct and capacity of the probationer are satisfactory to the appointing officer, his retention in the service shall be equivalent to his absolute appointment; but if his conduct or capacity be not satisfactory, he shall be notified by the appointing officer that he will not receive absolute appointment because of such unsatisfactory conduct or want of capacity; and such notification shall discharge him from the service: *Provided*, That the probation of an employee in the Indian school service shall terminate at the end of the school year in which he is appointed: *And provided further*, That the time which an employee has actually served as substitute in parts of the service where substitutes are authorized shall be counted as part of the probationary period of his regular appointment; but that time served under a temporary appointment shall not be so counted. Discharge of probationer. Termination of probation in Indian school service. Service of substitute part of probationary period. Temporary service not to be so counted.

Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of any one so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at

Boards of examiners.

Objection of appointing officer to eligible. 5. If the appointing or nominating officer shall object to an eligible named in the certificate, stating that, because of some physical defect, mental unsoundness, or moral disqualification, particularly specified, said eligible would be incompetent or unfit for the performance of the duties of the vacant position, and if said officer shall sustain such objection with evidence satisfactory to the Commission, the Commission may certify the eligible on the register who is in average percentage next below those already certified, in place of the one to whom objection is made and sustained.

Apportionment law to be observed. 6. Certifications for appointment of persons for service in, or on direct detail from, any Department or office in Washington, D. C., shall be so made as to maintain, as nearly as possible, the apportionment of such appointments among the several States and Territories and District of Columbia upon the basis of population, except to appointments in the Government Printing Office, to the position of printer's assistant, skilled helper and operative, in the Bureau of Engraving and Printing, to positions in the post quartermaster's office, in the pension agency, and other local offices, in the District of Columbia; and to the positions of page and messenger boy, and apprentice or student.

Exceptions to apportionment.

Appointment to lowest class and exception thereto. 7. Within any part of the service to which promotion regulations have been, or may hereafter be, applied, certification of those eligible to original appointment shall not be made for filling a vacancy in a position above the lowest class in any grade, whenever there is any person eligible and willing to be promoted to said vacancy: *Provided*, That a vacancy in any position requiring the exercise of technical or professional knowledge may be filled by original appointment.

Eligibles with same average percentage. 8. When two or more eligibles on a register have the same average percentage, preference in certification shall be determined by the order in which their applications were filed.

Vacancies to be filled by districts. 9. For filling vacancies in positions outside of the District of Columbia and in positions in the pension agency, the depot quartermaster's office, and other local offices, in the District of Columbia, the territory of the United States shall be arranged in such sections or districts as the Commission may determine; and an eligible shall be certified, in his order, to vacancies in the section or district in which he resides, and upon his written request to vacancies in any one or more of the other sections or districts: *Provided*, That in the custom-house service, Post-Office service, or Internal Revenue Service, an eligible shall be certified only to vacancies in the customs district, post-office, or internal-revenue district where he was examined.

Employment of substitutes. 10. In any part of the service in which the employment of substitutes is not prohibited by law, there may be certified and appointed in the manner provided for in this rule, only such number of substitutes as are actually needed for the performance of substitute duty.

Appointment and promotion of substitutes. 11. In any part of the service in which substitutes are employed, certifications of those eligible to original appointment shall be made for filling vacancies in substitute positions only, and vacancies in regular positions shall be filled by the appointment or promotion thereto of substitutes in the order of their original appointment as substitutes, whenever there are substitutes of the required sex who are eligible and willing to be so appointed or promoted. Substitutes so appointed or promoted shall, however, be subject to the provisions of these rules relating to probation and permanent appointment.

Preference to wife of superintendent of Indian school. 12. Upon request of the appointing or nominating officer, preference in certification may be given to the wife of the superintendent of an Indian school for filling a vacancy in the position of teacher or matron in said school.

Temporary appointment for emergency. 13. Whenever there shall occur a vacancy which the public interest requires shall be immediately filled and which can not be so filled in time to meet the emergency by certification from the eligible registers, such vacancy may, subject to the approval of the Commission, be filled by temporary appointment without examination until a regular appointment can be made. Such temporary appointment shall in no case continue longer than ninety days, and shall expire by limitation at the end of that time.

Restrictions upon temporary appointments. No person shall serve longer than ninety days in any one year under such temporary appointment or appointments, and in any event only until a regular appointment can be made through examination and certification. Said year limitation shall begin to run in the case of any person on the date of his first such appointment: *Provided*, That whenever an emergency shall arise requiring that a vacant position in any internal-revenue district shall be filled before a certificate can be issued by the Commission and an appointment made thereto in the manner provided in these rules, such position may be filled without regard to the provisions of these rules by temporary appointment for a period not to exceed thirty days and only for

Temporary appointment for emergency in internal-revenue district.

least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations, and in all proper ways to facilitate the same. *Sec. 3, ibid.*

Duties of public officers.

90. That it shall be the duty of the Secretary of the Interior to cause suitable and convenient rooms and accommodations to be assigned or provided and to be furnished, heated and lighted, at the city of Washington, for carrying on the work of said Commission and said

Accommodations, etc., for Commission.  
Sec. 4, act of Jan. 16, 1883, v. 22, p. 403.

such period as may be required for the execution of the necessary details of an appointment thereto in accordance with said provisions, but no person shall receive upon temporary such temporary appointment who within the ninety days next previous thereto has appointments in been separated from a position in said district to which he was temporarily appointed internal-revenue under the provisions of this section. districts.

14. Whenever a temporary appointment shall be made through certification from When temporary the eligible registers of the Commission in the manner provided in these rules, such rary appointment shall in no case continue longer than six months and shall ment must cease. expire by limitation at the end of that period.

#### RULE IX.

A vacancy in any position which has been, or may hereafter be, classified under the civil-service act, may, upon requisition of the proper officer and the certificate Reinstatement within one of the Commission, be filled by the reinstatement, without examination, of any person who, within one year next preceding the date of said requisition, has, through no delinquency or misconduct, been separated from a classified position at the date of said requisition and in that Department or office and that branch of the service in which said vacancy exists: *Provided*, That for original entrance to the position proposed to be filled by reinstatement there is not required by these rules, in the opinion of the Commission, an examination involving essential tests different from that of or higher than those involved in the examination for original entrance to the position formerly held by the person proposed to be reinstated: *And provided further*, That, subject to the other conditions of these rules, any person who served in the military or naval service of the United States in the late war of the rebellion and was honorably discharged therefrom, or the widow of any such person, may be reinstated without regard to the length of time he or she has been separated from the service. claimants.

Position to be reinstated may be of preference.

#### RULE X.

Within that part of the civil service of the United States which has been, or may hereafter be, classified under the civil-service act, transfers shall be governed as follows:

Transfers.

1. A person in any Department or office may be transferred within the same Department or office and the same branch of the service upon any test of fitness, not same Department-disapproved by the Commission, which may be determined upon by the appointing ment, office, or officer, subject to the limitations of the provisos of section 2 of this rule. branch of service.

2. A person who has received absolute appointment may be transferred without examination, from any Department, office, or branch of the service, upon requisition and consent of the proper officers, and the certificate of the Commission: *Provided*, That no transfer shall be made of a person to a position within the same Department, office, or branch of the service, if from original entrance to such position said person is barred by the age limitations prescribed therefor, or by the provisions regulating apportionment, or if in said position there is not required, in the judgment of the Commission, the performance of the same class of work, or the practice of the same mechanical trade, performed or practiced in the position from which transfer is proposed: *And provided further*, That transfer shall not be made without examination, provided by the Commission, to a position for original entrance to the examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfer is proposed; but a person employed in any grade shall not because of such employment be barred from the open competitive examination provided for original entrance to any other grade. examinations.

3. Upon requisition of the proper officer and the certificate of the Commission, transfer may be made without examination from the office of the President of the United States, after continuous service therein for the two years next preceding the date of said requisition, to any position classified under the civil-service act, if in said position there is required, in the judgment of the Commission, the performance of the same class of work, or the practice of the same mechanical trade, performed or practiced in the position from which transfer is proposed: *And provided further*, That transfer shall not be made without examination, provided by the Commission, to a position for original entrance to the examination involving essential tests different from or higher than those involved in the examination required for original entrance to the position from which transfer is proposed; but a person employed in any grade shall not because of such employment be barred from the open competitive examination provided for original entrance to any other grade. examinations.

examinations, and to cause the necessary stationery and other articles to be supplied and the necessary printing to be done for said Commission. *Sec. 4, ibid.*

Frauds.  
Sec. 5, *ibid.*

91. That any said commissioner, examiner, copyist, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in co-operation with one or more other persons, defeat, deceive, or obstruct any person in respect of his or her right of examination accord-

of the same class of work that is required to be performed in the position from which transfer is proposed.

No transfer from excepted to nonexcepted position, with exception. 4. Transfer shall not be made from an excepted position to a position not excepted: *Provided*, That a person holding an excepted position at the time said position is classified under the civil-service act, or a person holding an excepted position which he entered prior to the President's order of November 2, 1894, may, subject to the other conditions and provisions of this rule, be transferred to a position not excepted.

No transfer from unclassified to classified position, with exception. 5. Transfer shall not be made from a position not classified under the civil-service act to a classified position: *Provided*, That a person who, by promotion or transfer from a classified position, has entered a position, appointment to which is made by the President by and with the advice and consent of the Senate, and has served continuously therein from the date of said promotion or transfer, may be retransferred from said Presidential appointment to the position from which he was so transferred or to any position to which transfer could be made therefrom.

Transfer from position outside to position within District of Columbia. 6. Transfer shall not be made from a position outside the District of Columbia to a position within the District of Columbia except upon the certificate of the Commission, subject to the other conditions and provisions of this rule.

Transfer from one classified position to another classified position. 7. Any person who has been transferred from a classified position to another classified position may be retransferred to the position in which he was formerly employed, or to any position to which transfer could be made therefrom, without regard to the limitations of this rule.

8. All transfers herein authorized shall be made only after the issuance by the Commission of the certificates therefor, except those which may be specifically exempted from such condition by regulation of the Commission.

Certificates for transfers. 9. Whenever a person is proposed for transfer from one branch of the service to another branch of the service, and from a part of the service not within the provisions regulating apportionment to a part of the service within said provisions, and the transfer is one which, under the provisions of this rule, may be allowed without examination, such person shall be required, precedent to his transfer, to file a statement under oath setting forth the same facts accompanied by the same certificates or vouchers relating to residence as may be required in an application for examination.

Facts to be set forth in application for transfer.

## RULE XI.

### Promotions.

1. In pursuance of the requirements of section 7 of the civil-service act, competitive tests or examinations shall, as far as practicable and useful, be established to test fitness for promotion in any part of the civil service of the United States which has been, or may hereafter be, classified under the civil-service act.

Commission to formulate details regulating promotions. 2. The details regulating promotions shall be formulated by the Commission after consultation with the heads of the several Departments, bureaus, or offices. It shall be the duty of the head of each Department, bureau, or office, when such regulations have been formulated, to promulgate same, and any amendments or revocations thereof shall be approved by the Commission before going into effect.

Commission to designate boards of promotion. 3. The Commission shall, upon the nomination of the head of each Department, bureau, or office, designate and select a suitable number of persons, not less than three, in said Department, bureau or office, to be members of a board of promotion. In the Departments, bureaus, or offices in Washington, and in all other offices, the members of any board of examiners shall not all be adherents of one political party, when persons of other political parties are available and competent to serve upon said board.

Promotions before adoption of regulations. 4. Until the regulations herein authorized have been approved for any Department, bureau, or office, in which promotion regulations approved by the Commission are not in force, promotions therein may be made from one class to another class which is in the same grade, and from one grade to another grade, upon any test of fitness, not disapproved by the Commission, which may be determined upon by the promoting officer: *Provided*, That no promotion of a person shall be made, except upon examination provided by the Commission, from one class to another class, or from one grade to another grade, if for original entrance to said class or grade to which promotion is proposed there is required by these rules an examination involving essential tests different from or higher than those involved in the examination required for original entrance to the class or grade from which promotion is proposed: *And provided further*, That no promotion of a person shall be made, except upon examination provided by the Commission, to a position in which, in the judgment of the Commission, there is not required the performance of the same class of work, or the practice of the same mechanical trade, which is required to be performed or practiced, in the position from which promotion is proposed; but a person employed in any grade shall not, because of such employment, be barred from the open competitive examination provided for original entrance to any other grade: *And provided further*, That no promotion of a person shall be made to a class or grade

When examinations are required for promotions.

Employees not barred from open competitive examinations.

Age limitations.

ing to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either

from original entrance to which such person is barred by the age limitation prescribed therefor or by the provisions regulating apportionment.

#### RULE XII.

1. In pursuance of the provisions of section 2 of the civil-service act, every nominating or appointing officer in the executive civil service of the United States shall furnish to the Commission a list of all the positions and employments under his control and authority, together with the names, designations, compensations, and dates of appointment or employment, of all persons serving in said positions or employments; said list to be arranged as follows: (a) Classified positions not excepted from examination; (b) classified positions excepted from examination; (c) unclassified positions.

2. Every nominating or appointing officer in the executive civil service shall report in detail to the Commission, in form and manner to be prescribed by the Commission, all changes, as soon as made, and the dates thereof, in the service under his control and authority, setting forth among other things the following: The position to which an appointment or reinstatement is made; the position from which a separation is made, whether the same was caused by dismissal, resignation, or death; and the position from which and the position to which a transfer or promotion is made; the compensation of every position from which or to which a change is made; the name of every person appointed, reinstated, promoted, transferred, or separated from the service; and every failure to accept an appointment and the reasons therefor.

Approved May 6, 1896.

GROVER CLEVELAND.

#### CLASSIFICATION OF EMPLOYEES IN THE WAR DEPARTMENT.

DEPARTMENT OF WAR,  
Washington, June 10, 1896.

By direction of the President of the United States, and in accordance with the third clause of section 6 of the act entitled "An act to regulate and improve the civil service of the United States," approved January 16, 1883, it is ordered that the officers and employees in or under this Department included within the provisions of the civil-service law and rules be, and they are hereby, arranged in the following classes:

Class A. All persons receiving an annual salary of less than \$720, or a compensation at the rate of less than \$720 per annum.

Class B. All persons receiving an annual salary of \$720 or more, or a compensation at the rate of \$720 or more, but less than \$840 per annum.

Class C. All persons receiving an annual salary of \$840 or more, or a compensation at the rate of \$840 or more, but less than \$900 per annum.

Class D. All persons receiving an annual salary of \$900 or more, or a compensation at the rate of \$900 or more, but less than \$1,000 per annum.

Class E. All persons receiving an annual salary of \$1,000 or more, or a compensation at the rate of \$1,000 or more, but less than \$1,200 per annum.

Class 1. All persons receiving an annual salary of \$1,200 or more, or a compensation at the rate of \$1,200 or more, but less than \$1,400 per annum.

Class 2. All persons receiving an annual salary of \$1,400 or more, or a compensation at the rate of \$1,400 or more, but less than \$1,600 per annum.

Class 3. All persons receiving an annual salary of \$1,600 or more, or a compensation at the rate of \$1,600 or more, but less than \$1,800 per annum.

Class 4. All persons receiving an annual salary of \$1,800 or more, or a compensation at the rate of \$1,800 or more, but less than \$2,000 per annum.

Class 5. All persons receiving an annual salary of \$2,000 or more, or a compensation at the rate of \$2,000 or more, but less than \$2,500 per annum.

Class 6. All persons receiving an annual salary of \$2,500 or more, or a compensation at the rate of \$2,500 or more per annum.

It is provided, that this classification shall not include persons appointed to an office by and with the advice and consent of the Senate, nor persons employed as mere laborers or workmen; but all positions whose occupants are designated as laborers or workmen and who were, prior to May 6, 1896, and are now, regularly assigned to work of the same grade as that performed by classified employees, shall be included within this classification. Hereafter no person who is appointed as a laborer or workman, without examination under the civil-service rules, shall be assigned to work of the same grade as that performed by classified employees.

It is also ordered, that no person shall be admitted into any place not excepted from examination by the civil-service rules, in any of the classes above designated, until he shall have passed an appropriate examination prepared by the United States Civil Service Commission and his eligibility has been certified to this Department by said Commission.

JOSEPH B. DOE,  
Acting Secretary of War.



improving or injuring the prospects or chances of any person so examined, or to be examined, being appointed, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not less than ten days, nor more than one year, or by both such fine and imprisonment. *Sec. 5, ibid.*

Customs clas-  
sification.  
*Sec. 6, ibid.*

**92.** That within sixty days after the passage of this act it shall be the duty of the Secretary of the Treasury, in as near conformity as may be to the classification of certain clerks now existing under the one hundred and sixty-third section of the Revised Statutes, to arrange in classes the several clerks and persons employed by the collector, naval officer, surveyor, and appraisers, or either of them, or being in the public service, at their respective offices in each customs district where the whole number of said clerks and persons shall be altogether as many as fifty. And thereafter, from time to time, on the direction of the President, said Secretary shall make the like classification or arrangement of clerks and persons so employed, in connection with any said office or offices, in any other customs district. And, upon like request, and for the purposes of this act, said Secretary shall arrange in one or more of said classes, or of existing classes, any other clerks, agents, or persons employed under his department in any said district not now classified; and every such arrangement and classification upon being made shall be reported to the President.

Post-office  
classification.

*Second.* Within said sixty days it shall be the duty of the Postmaster-General, in general conformity to said one hundred and sixty-third section, to separately arrange in classes the several clerks and persons employed, or in the public service, at each post-office, or under any postmaster of the United States, where the whole number of said clerks and persons shall together amount to as many as fifty. And thereafter, from time to time, on the direction of the President, it shall be the duty of the Postmaster-General to arrange in like classes the clerks and persons so employed in the postal service in connection with any other post-office; and every such arrangement and classification upon being made shall be reported to the President.

*Third.* That from time to time said Secretary, the Postmaster-General, and each of the heads of departments mentioned in the one hundred and fifty-eighth section of the Revised Statutes, and each head of an office shall, on

the direction of the President, and for facilitating the execution of this act, respectively revise any then existing classification or arrangement of those in their respective departments and offices, and shall, for the purposes of the examination herein provided for, include in one or more of such classes, so far as practicable, subordinate places, clerks, and officers in the public service pertaining to their respective departments not before classified for examination. *Sec. 6, ibid.*

93. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-fourth section of the Revised Statutes,<sup>1</sup> nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section<sup>2</sup> of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination. *Sec. 7, ibid.*

Examination required for appointment and promotion.  
*Sec. 7, ibid.*

Preference claimants, sec. 1754, R. S.

Exclusions.

94. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable. *Sec. 8, ibid.*

Persons using intoxicating beverages ineligible to appointment.  
*Sec. 8, ibid.*

95. That whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades. *Sec. 9, ibid.*

Members of a family.  
*Sec. 9, ibid.*

96. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act. *Sec. 10, ibid.*

Recommendation by Members of Congress.  
*Sec. 10, ibid.*

<sup>1</sup> Paragraph 84, ante.

<sup>2</sup> Paragraph 83, ante.

Political assessments.  
a s-  
Sec. 11, *ibid.*

**97.** That no Senator, or Representative, or Territorial Delegate of the Congress, or Senator, Representative, or Delegate elect, or any officer or employee of either of said houses, and no executive, judicial, military, or naval officer of the United States, and no clerk or employee of any Department, branch, or bureau of the executive, judicial, or military or naval service of the United States, shall, directly or indirectly, solicit or receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever from any officer, clerk, or employee of the United States, or any Department, branch, or bureau thereof, or from any person receiving any salary or compensation from moneys derived from the Treasury of the United States. *Sec. 11, ibid.*

Soliciting contributions for political purposes forbidden.  
Sec. 12, *ibid.*

**98.** That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy-yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever. *Sec. 12, ibid.*

Change of rank or compensation.  
Sec. 13, *ibid.*

**99.** No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose. *Sec. 13, ibid.*

Political contributions forbidden.  
Sec. 14, *ibid.*

**100.** That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatever. *Sec. 14, ibid.*

Penalty for violation of preceding sections.  
Sec. 15, *ibid.*

**101.** That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years, or by such fine and imprisonment both, in the discretion of the court. *Sec. 15, ibid.*

Applications for examination to be accompanied by certificate of residence.

**102.** That hereafter every application for examination before the Civil Service Commission for appointment in the Departmental service in the District of Columbia, shall be

accompanied by a certificate of an officer, with his official seal attached, of the county and State of which the applicant claims to be a citizen, that such applicant was, at the time of making such application, an actual and bona fide resident of said county, and had been such resident for a period of not less than six months next preceding;

103. But this provision shall not apply to persons who may be in the service and seek promotion or appointment in other branches of the Government. *Act of July 11, 1890 (26 Stat. L., 235).*

July 11, 1890, v. 26, p. 235.  
Preceding section not to apply to promotion, etc.

104. That section seventeen hundred and fifty-six of the Revised Statutes be, and the same is hereby, repealed; and hereafter the oath to be taken by any person elected or appointed to any office of honor or profit either in the civil, military, or naval service, except the President of the United States, shall be as prescribed in section seventeen hundred and fifty-seven<sup>1</sup> of the Revised Statutes. But this repeal shall not affect the oaths prescribed by existing statutes in relation to the performance of duties in special or particular subordinate offices and employments. *Sec. 2, act May 13, 1884 (23 Stat. L., 22).*

Official oaths. May 13, 1884, s. 2, v. 23, p. 22.

105. That the provisions of this act shall in no manner affect any right, duty, claim, obligation, or penalty now existing or already incurred; and all and every such right, duty, claim, obligation, and penalty shall be heard, tried, and determined, and effect shall be given thereto, in the same manner as if this act had not been passed. *Sec. 3, ibid.*

Not to affect existing rights, etc. May 13, 1884, s. 3, v. 23, p. 22.

106. Whenever any person who is not rendered ineligible to office by the provisions of the fourteenth amendment to the Constitution is elected or appointed to any office of honor or trust under the Government of the United States, and is not able, on account of his participation in the late rebellion, to take the oath prescribed in the preceding section, he shall, before entering upon the duties of his office, take and subscribe in lieu of that oath the following oath: "I, A B, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God."<sup>2</sup>

Oath for certain persons. July 11, 1868, c. 139, v. 15, p. 85; Feb. 15, 1871, c. 53, v. 16, p. 412.

Sec. 1757, R. S.

<sup>1</sup>Par. 106.

<sup>2</sup>For definition of office see *U. S. v. Germaine*, 99, U. S., 508 and *Mouat v. U. S.*, 124 U. S., 303. See, also, note 1 to paragraph 4 *ante*.

Who may administer oath.

Aug. 6, 1861, c. 64, s. 2, v. 12, p. 326.

Sec. 2, May 13, 1884, v. 23, p. 22.

Sec. 1758, R. S.

Custody of oath.

July 2, 1862, c. 128, v. 12, p. 502.

Sec. 1759, R. S.

Unauthorized office, no salary for.

Feb. 9, 1863, c. 25, s. 2, v. 12, p. 646.

Sec. 1760, R. S.

No salaries to certain appointees to fill vacancies during recess of Senate.

Feb. 9, 1863, c. 25, s. 2, v. 12, p. 646.

Sec. 1761, R. S.

Salaries to officers improperly holding over.

Mar. 2, 1867, c. 154, s. 9, v. 14, p. 431.

Sec. 1762, R. S.

Holding two offices by persons receiving \$2,500 forbidden, Sec. 2, July 31, 1894, v. 28, p. 205.

**107.** The oath of office required by the preceding section may be taken before any officer who is authorized either by the laws of the United States, or by the local municipal law, to administer oaths, in the State, Territory, or District where such oath may be administered.

**108.** The oath of office taken by any person pursuant to the requirements of section seventeen hundred and fifty-six,<sup>1</sup> or of section seventeen hundred and fifty-seven, shall be delivered in by him to be preserved among the files of the House of Congress, Department, or court to which the office in respect to which the oath is made may appertain.

**109.** No money shall be paid from the Treasury to any person acting or assuming to act as an officer, civil, military, or naval, as salary, in any office when the office is not authorized by some previously existing law, unless such office is subsequently sanctioned by law.

**110.** No money shall be paid from the Treasury, as salary, to any person appointed during the recess of the Senate to fill a vacancy in any existing office, if the vacancy existed while the Senate was in session and was by law required to be filled by and with the advice and consent of the Senate, until such appointee has been confirmed by the Senate.

**111.** No money shall be paid or received from the Treasury, or paid or received from or retained out of any public moneys or funds of the United States, whether in the Treasury or not, to or by or for the benefit of any person appointed to or authorized to act in or holding or exercising the duties or functions of any office contrary to sections seventeen hundred and sixty-seven to seventeen hundred and seventy, inclusive; nor shall any claim, account, voucher, order, certificate, warrant, or other instrument providing for or relating to such payment, receipt, or retention, be presented, passed, allowed, approved, certified, or paid by any officer, or by any person exercising the functions or performing the duties of any office or place of trust under the United States, for or in respect to such office or the exercising or performing the functions or duties thereof. Every person who violates any of the provisions of this section shall be deemed guilty of a high misdemeanor, and shall be imprisoned not more than ten years, or fined not more than ten thousand dollars, or both.

**112.** No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or

<sup>1</sup> Repealed by act of May 13, 1884. (23 Stat. L., 22).

hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate.<sup>1</sup>

Retired officers  
excepted.

Sec. 1763, R. S.

*Sec. 2, act of July 31, 1894 (28 Stat. L., 205).*

113. No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other Department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law.<sup>2</sup>

Extra services,  
no compensation  
for, except espe-  
cially authorized  
by law.

Ang. 26, 1842,  
c. 202, s. 12, v. 5, p.  
525.

Sec. 1764, R. S.

<sup>1</sup>The traditions and usages of the United States recognize the policy and propriety of employing, when necessary, the same person at the same time in two distinct capacities. Not to mention other familiar cases, there are the prominent examples of the diplomatic mission of Mr. Jay to England, under President Washington, while he was still Chief Justice of the United States; of the mission of Mr. Gallatin to London and St. Petersburg, to negotiate a peace, while Secretary of the Treasury under President Madison; and of Mr. Justice Nelson, sitting as a member of the commission which concluded the treaty of Washington, under President Grant. On the other hand, it is the undoubted aim of general legislation respecting salaries to gauge the work so as to give full employment to the capacities of the man likely to be appointed to do it, and to measure the pay according to the work. In construing statutes restraining the Executive from giving dual or extra compensation, courts have aimed to carry out the legislative intent by giving them sufficient flexibility not to injure the public service and sufficient rigidity to prevent executive abuse. *Landrum v. U. S.*, 16 C. Cls. R., 74, 82. The great object has been to establish by law the compensation for public services, whether in offices or agencies, where the nature and character of the duties to be performed were sufficiently known and definite to enable Congress to form an estimate of its value, and not leave it to the discretion of the head of an Executive Department. \* \* \* These sections "can by no fair interpretation be held to embrace an employment which has no affinity or connection, either in its character or by law or usage, with the line of his official duty, and where the service to be performed is of a different character and for a different place and the amount of compensation is regulated by law. \* \* \* The just and fair inference from these acts of Congress taken together is that no discretion is left to the head of a Department to allow an officer, who has a fixed compensation, any credit beyond his salary, unless the service he has performed is required by existing laws and the remuneration for them is fixed by law." *Converse v. U. S.*, 21 How., 463, 470, 473; *U. S. v. Brindle*, 110 U. S., 688, 694; *U. S. v. Shoemaker*, 7 Wall., 338; *Meigs v. U. S.*, 19 C. Cls. R., 497; 15 Opin. Att. Gen., 608.

A question having arisen as to the payment of a per diem to the members and certain employees of the Bering Sea Tribunal of Arbitration, it was held: As to Justice Harlan and Senator Morgan, that the terms of section 1763 of the Revised Statutes, as amended by the act of July 31, 1894 (28 Stat. L., 205), did not apply, as they had been appointed to separate and distinct offices not incompatible with the offices of justice of the Supreme Court, Senator of the United States, and retired judge. Payments to them were therefore allowed. *U. S. v. Saunders*, 120 U. S., 126. As to Senator Morgan, it was held that membership of a tribunal of arbitration did not constitute the holding of office under the authority of the United States under article 1, section 6, of the Constitution, and that Senator Morgan was not thereby prohibited from sitting thereon. The payment of per diem allowances to clerks and other regular employees of the United States, who had been detailed from the several Executive Departments to assist the tribunal in its labors, was held to be unauthorized under section 1765 of the Revised Statutes. *Held*, under this section, that a major and paymaster in the Army, detailed as disbursing officer of the Bering Sea Tribunal of Arbitration at Paris, could not receive any other allowances or emoluments than those specified in this section as allowable to officers of the Army. *Compt. Dec.*, 1893-94, 275.

A compensation for extra services, where no certain allowance is fixed by law, can not be paid by the head of a Department to any officer of the Government who has, by law, a certain compensation in the office he holds. 10 Opin. Att. Gen., 31. The various provisions of law forbidding extra allowance or additional pay for extra service, imply extra-service pay or allowance in the same office, not distinct service in distinct offices. 8 Opin. Att. Gen., 325. Where the service is one required by law, but not of any particular official, and compensation therefor is fixed by competent authority, and is appropriated, any officer who, under due authorization, performs the service is entitled to the compensation. 15 Opin. Att. Gen., 608. See also *Converse admr. v. U. S.*, 21 How., 463; *U. S. v. Shoemaker*, 7 Wall., 338; *Stansbury v. U. S.*, 8 Wall., 33. But see, for exception, sec. 7, act of June 3, 1896 (29 Stat. L., 235).

<sup>2</sup>*Stansbury v. U. S.*, 8 Wall., 33.

Extra allow-  
ances.

Mar. 3, 1839, c.  
82, s. 3, v. 5, p. 349;  
Aug. 23, 1842, c.  
183, s. 2, v. 5, p.  
510.

**114.** No officer in any branch of the public service, or any other person whose salary,<sup>1</sup> pay, or emoluments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form what-

**Sec. 1765, R.S.** ever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.<sup>2</sup>

Officer in ar-  
rears.

Jan. 25, 1828, c.  
2, v. 4, p. 246;  
May 20, 1836, c.  
77, v. 5, p. 31.

**115.** No money shall be paid to any person for his compensation who is in arrears<sup>3</sup> to the United States, until he has accounted for and paid into the Treasury all sums for which he may be liable. In all cases where the pay or salary of any person is withheld in pursuance of this section, the accounting officers of the Treasury, if required to do so by the party, his agent or attorney, shall report forthwith to the Solicitor of the Treasury the balance due, and the Solicitor shall, within sixty days thereafter, order suit to be commenced against such delinquent and his sureties.

**Sec. 1766, R.S.**

Commissions.  
Mar. 2, 1867, c.  
154, s. 6, v. 14, p.  
431.

**116.** The President is authorized to make out and deliver, after the adjournment of the Senate, commissions for all officers whose appointments have been advised and consented to by the Senate.<sup>4</sup>

Notification of  
appointments to  
Secretary of  
Treasury.

Mar. 2, 1867, c.  
154, s. 8, v. 14, p.  
431.

**117.** Whenever the President, without the advice and consent of the Senate, designates, authorizes, or employs any person to perform the duties of any office, he shall forthwith notify the Secretary of the Treasury thereof, and the Secretary of the Treasury shall thereupon communicate such notice to all the proper accounting and disbursing officers of his Department.

**Sec. 1774, R.S.**

Notification of  
nominations, re-  
jections, etc., to  
Secretary of  
Treasury.

Mar. 2, 1867, c.  
154, s. 7, v. 14, p.  
431.

**118.** The Secretary of the Senate shall, at the close of each session thereof, deliver to the Secretary of the Treasury, and to each of the Assistant Secretaries of the Treasury, and to each of the Auditors, and to each of the Comptrollers in the Treasury, and to the Treasurer, and to the Register of the Treasury, a full and complete list, duly certified, of all the persons who have been nominated to and rejected by the Senate during such session, and a like list of all the offices to which nominations have been made and not confirmed and filled at such session.

**Sec. 1775, R.S.**

<sup>1</sup> Salary is fixed when it is at a stipulated rate for a definite period of time; pay or emolument is fixed when the amount is agreed upon and the service is defined. *Hedrick v. U. S.*, 16 C. Cls. R., 88.

<sup>2</sup> See note 1 to paragraph 112, *supra*.

<sup>3</sup> The phrase "who is in arrears to the United States" contained in the act of January 25, 1828 (sec. 1766, R. S.), applies only to persons who, having had previous transactions of a pecuniary nature with the Government, are found, upon the settlement of those transactions, to be in arrears. <sup>3</sup> *Opin. Att. Gen.*, 52. See also the title *Stoppages*, in the chapter entitled THE PAY DEPARTMENT.

<sup>4</sup> For statutory provisions respecting commissions in the Army and Navy see the chapter entitled COMMISSIONED OFFICERS.

119. Whenever any public office is removed by reason of sickness which may prevail in the town or city where it is located, a particular account of the cost of such removal shall be laid before Congress.

Removal of office.  
Apr. 21, 1806, c. 41, s. 6, v. 2, p. 397.  
Sec. 1776, R. S.

120. The various officers of the United States to whom, in virtue of their offices and for the uses thereof, copies of the United States Statutes at Large, published by Little, Brown and Company, have been or may be distributed at the public expense, by authority of law, shall preserve such copies, and deliver them to their successors respectively as a part of the property appertaining to the office. A printed copy of this section shall be inserted in each volume of the Statutes distributed to any such officers.

Preservation of copies of Statutes at Large.  
Aug. 8, 1846, c. 100, s. 1, v. 9, p. 75.  
Sec. 1777, R. S.

121. In all cases in which, under the laws of the United States, oaths or acknowledgments may now be taken or made before any justice of the peace of any State or Territory, or in the District of Columbia, they may hereafter be also taken or made by or before any notary public duly appointed in any State, district, or Territory, or any of the commissioners of the circuit courts, and, when certified under the hand and official seal of such notary or commissioner, shall have the same force and effect as if taken or made by or before such justice of the peace.

Taking oaths, acknowledgments, etc.  
Sept. 16, 1850, c. 52, v. 9, p. 458;  
July 29, 1854, c. 159, s. 1, v. 10, p. 315; June 22, 1874, c. 390, s. 20, v. 18, p. 186; Aug. 15, 1876, c. 304, v. 19, p. 206.

Sec. 1778, R. S.

122. No executive officer, other than the heads of Departments, shall apply more than thirty dollars, annually, out of the contingent fund under his control, to pay for newspapers, pamphlets, periodicals, or other books or prints not necessary for the business of his office.

Restriction upon payments for newspapers, etc.  
Mar. 3, 1839, c. 82, s. 3, v. 5, p. 349.

Sec. 1779, R. S.

123. Every officer who neglects or refuses to make any return or report which he is required to make at stated times by any act of Congress or regulation of the Department of the Treasury, other than his accounts, within the time prescribed by such act or regulation, shall be fined not more than one thousand dollars and not less than one hundred.

Failure to make returns or reports.  
July 18, 1866, c. 201, s. 42, v. 14, p. 188.

Sec. 1780, R. S.

124. Every member of Congress or any officer or agent of the Government who, directly or indirectly, takes, receives, or agrees to receive, any money, property, or other valuable consideration whatever, from any person for procuring, or aiding to procure, any contract, office, or place, from the Government or any Department thereof, or from any officer of the United States, for any person whatever, or for giving any such contract, office, or place, to any person whomsoever, and every person who, directly or indirectly, offers or agrees to give, or gives, or bestows any money, property, or other valuable consideration whatever.

Prohibition upon taking consideration for procuring contracts, offices, etc.  
July 16, 1862, c. 180, v. 12, p. 577;  
Feb. 25, 1863, c. 61, v. 12, p. 696.

Sec. 1781, R. S.



for the procuring or aiding to procure any such contract, office, or place, and every member of Congress who, directly or indirectly, takes, receives, or agrees to receive any money, property, or other valuable consideration whatever after his election as such member, for his attention to, services, action, vote, or decision on any question, matter, cause, or proceeding which may then be pending, or may by law or under the Constitution be brought before him in his official capacity, or in his place as such member of Congress, shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years and fined not more than ten thousand dollars. And any such contract or agreement may, at the option of the President, be declared absolutely null and void; and any member of Congress or officer convicted of a violation of this section, shall, moreover, be disqualified from holding any office of honor, profit, or trust under the Government of the United States.<sup>1</sup>

Upon taking compensation in matters to which United States is a party.

June 11, 1864, c. 119, v. 13, p. 123.

Sec. 1782, R. S.

**125.** No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

Persons interested not to act as agents of the Government.

Mar. 2, 1863, c. 67, s. 8, v. 12, p. 698.

Sec. 1783, R. S.

**126.** No officer or agent of any banking or other commercial corporation, and no member of any mercantile or trading firm, or person directly or indirectly interested in the pecuniary profits or contracts of such corporation or firm, shall be employed or shall act as an officer or agent of the

<sup>1</sup> Sections 1781 and 1782 of the Revised Statutes make it illegal for an officer of the United States to have that sort of connection with a Government contract which an agent, attorney, or solicitor assumes when he procures, or aids in procuring, such contract for another, or when he prosecutes for another any claim against the Government founded thereon. 14 Opin. Att. Gen., 483. But there is in the statutes no general provision whereby officers of the executive branch of the Government are forbidden to contract directly with the Government as principals, in matters separate from their offices and in no way connected with the performance of their official duties; nor are those officers forbidden to be connected with such contracts, after they are procured, by acquiring an interest therein. *Ibid.*

United States for the transaction of business with such corporation or firm; and every such officer, agent, or member, or person, so interested, who so acts, shall be imprisoned not more than two years, and fined not more than two thousand dollars nor less than five hundred dollars.

127. No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donation as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ.

128. That all executive officers or employees of the United States not appointed by the President, with the advice and consent of the Senate, are prohibited from requesting, giving to, or receiving from, any other officer or employee of the Government, any money or property or other thing of value for political purposes; and any such officer or employee, who shall offend against the provisions of this section shall be at once discharged from the service of the United States; and he shall also be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding five hundred dollars.<sup>1</sup> *Sec. 6, act of August 15, 1876 (19 Stat. L., 169).*

Prohibition of contributions, presents, etc., to superiors.

Feb. 1, 1870, c. 11, v. 16, p. 63.

Sec. 1784, R. S.

Requesting, etc., contributions by officers of Government for political purposes.

Sec. 6, Aug. 15, 1876, v. 19, p. 169.

<sup>1</sup>This section was held to be constitutional by the Supreme Court in *Ex parte Curtis*, 106 U. S., 371.

## CHAPTER V.

### THE DEPARTMENT OF THE TREASURY—THE ACCOUNTING OFFICERS.

Par.	Par.
129. The Department of the Treasury.	132. Transmission of monthly accounts. Auditors may disapprove requisitions on delinquency. Secretary of Treasury to prescribe rules for rendition of accounts.
130. Public accounts to be settled in the Department of the Treasury.	133. Secretary of Treasury to report delinquent officers.
131. Commencement of the fiscal year.	

The Department of the Treasury.  
Sept. 2, 1789, c.  
12, s. 1, v. 1, p. 65.

**129.** There shall be at the seat of Government an Executive Department to be known as the Department of the Treasury, and a Secretary of the Treasury, who shall be the head thereof.

Sec. 233, R. S.

#### ACCOUNTS.

Public accounts to be settled in the Department of the Treasury.

Sec. 236, R. S.

**130.** All claims and demands whatever by the United States or against them, and all accounts whatever in which the United States are concerned, either as debtors or as creditors, shall be settled and adjusted in the Department of the Treasury.<sup>1</sup>

<sup>1</sup> *Claims.*—In the performance of the duty imposed by this statute the Secretary of the Treasury is not subject to the control of the courts of the United States and, the duty not being ministerial in character, a writ of mandamus will not lie to compel the allowance of a claim presented under the statute. *Kendall v. Stockton*, 12 Pet., 524; *Decatur v. Paulding*, 14 Pet., 497, 515; *U. S. v. Guthrie*, 17 How., 284, 304; *Brashear v. Mason*, 6 How., 92, 102. Such action on the part of the courts would also be in the nature of entertaining a suit against the United States, which is not within their jurisdiction. *U. S. v. Guthrie*, 17 How., 284, 305.

Where a claim within the scope of his official authority was submitted to the Secretary of the Treasury, and by him decided adversely, it is incompetent for his official successor to set the same aside or reopen it unless there has been a mistake in a matter of fact or material testimony discovered and produced. 5 Opin. Att. Gen., 664. A head of a Department of the Government has no right to review the acts of his predecessors, except to correct an error of calculation. He cannot recall a credit given or allowance made. Such action is for the judiciary. *U. S. v. Bank of Metropolis*, 15 Pet., 377.

*Compromise of claims.*—Claims against the United States which are disputed by the officers authorized to adjust such accounts may be compromised, and if the claimant voluntarily enters into such a compromise and accepts a smaller sum than

**131.** The fiscal year of the Treasury of the United States in all matters of accounts, receipts, expenditures, estimates, and appropriations, except accounts of the Secretary of the Senate for compensation and traveling expenses of Senators,<sup>1</sup> shall commence on the first day of July in each year; and all accounts of receipts and expenditures required by law to be published annually shall be prepared and published for the fiscal year as thus established. The fiscal year for the adjustment of the accounts of the Secretary of the Senate for compensation and traveling expenses of Senators shall extend to and include the third day of July.

Commencement of the fiscal year. Ang. 26, 1842, c. 207, ss. 1, 2, v. 5, p. 536; May 8, 1872, c. 139, s. 1, v. 17, p. 61; Mar. 3, 1873, c. 226, s. 1, v. 17, p. 486.

Sec. 227, R. S.

**132.** All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within ten days after the end of the month to which they relate, and quarterly and other accounts within twenty days after the period to which they relate, and shall be transmitted to and received by the Auditors within twenty days of their actual receipt at the proper office in Washington in the case of monthly, and sixty days in the case of quarterly and other accounts. Should there be any delinquency in this regard at the time of the receipt by the Auditor of a requisition for an advance of money, he shall disapprove the requisition, which he may also do for other reasons arising out of the condition of the officer's accounts for whom the advance is requested; but the Secretary of the Treasury may overrule the Auditor's decision as to the sufficiency of these latter reasons: *Provided*, That the Secretary of the Treasury shall prescribe suitable rules and regulations, and may make orders in particular cases, relaxing the requirement of mailing or otherwise sending accounts, as aforesaid, within ten

Transmission of monthly, etc., accounts.

Sec. 12, July 31, 1894, v. 28, p. 209.

Auditor may disapprove requisitions on delinquency, etc.

*Provisos.* Secretary of the Treasury to prescribe rules for rendition of accounts.

the claim and executes a discharge in full for the whole claim, he is bound by the adjustment and can not sue for what he has voluntarily relinquished. *Sweeney v. U. S.*, 17 Wall., 75, 77; *Mason v. U. S.*, *ibid.*, 67.

*Set-off.*—When a person is both debtor and creditor of the United States, in any form, the officers of the Treasury Department in settling the accounts, not only have the power, but are required, in the proper discharge of their duties, to set off the one indebtedness against the other, and to allow and certify for payment only the balance found due on one side or the other. \* \* \* The right of set-off in such cases exists independently of these enactments (sec. 1766, Rev. Stat., and the act of March 3, 1875; 1 Sup. to Rev. Stat., 185), and is founded upon what is now section 236 of the Revised Statutes. *Taggart v. U. S.*, 17, C. Cls. R., 322, 327; *McKnight's Case*, 13 *ibid.*, 292; *Bonnafont's Case*, 14 *ibid.*, 489; *Howes v. U. S.*, 24 *ibid.*, 170; *Reeside v. Walker*, 11 How., 272, 290. The power in the matter of set-offs conferred upon the Secretary of the Treasury by the act of March 3, 1875 (18 Stat. L., 481), is exclusive, and can not be exercised by the courts. *U. S. v. Griswold*, 30 Fed. Rep., 604.

Settled accounts in the Treasury Department, where the United States have acted on the settlement and paid the balance therein found due, can not be opened or set aside years afterwards merely because some of the prescribed steps in the accounting which it was the duty of a head of a Department to see had been taken had in fact been omitted, or on account of technical irregularities when the remedy of the party against the United States is barred by the statute of limitation and the remedies of the United States are intact, owing to its not being subject to an act of limitation. *U. S. v. Johnston*, 124 U. S., 236, 1 Compt. Dec., 192.

<sup>1</sup>Extended by section 9, act of October 1, 1890 (26 Stat. L., 646), to include the accounts of the Sergeant-at-Arms of the House of Representatives for compensation and mileage of Members and Delegates.

Delays in submitting accounts.

or twenty days, or waiving delinquency, in such cases only in which there is, or is likely to be, a manifest physical difficulty in complying with the same, it being the purpose of this provision to require the prompt rendition of accounts without regard to the mere convenience of the officers, and to forbid the advance of money to those delinquent in rendering them: *Provided further*, That should there be a delay by the administrative Departments beyond the aforesaid twenty or sixty days in transmitting accounts, an order of the President [or, in the event of the absence from the seat of Government or sickness of the President, an order of the Secretary of the Treasury] in the particular case shall be necessary to authorize the advance of money requested: *And provided further*, That this section shall not apply to accounts of the postal revenue and expenditures therefrom, which shall be rendered as now required by law.<sup>1</sup> *Sec. 12, act of July 31, 1894.*

Secretary of Treasury to report delinquent officers.

*Sec. 4, May 28, 1896, v. 29, p. 179.*

133. The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers and administrative departments and offices of the Government as were, respectively, at any time during the last preceding fiscal year delinquent in rendering or transmitting accounts to the proper offices in Washington and the cause therefor, and in each case indicating whether the delinquency was waived, together with such officers, including postmasters and officers of the Post-Office Department, as were found upon final settlement of their accounts to have been indebted to the Government, with the amount of such indebtedness in each case, and who, at the date of making report, had failed to pay the same into the Treasury of the United States.<sup>2</sup> *Sec. 4, act of May 28, 1896 (29 Stat. L., 179).*

<sup>1</sup> Amended by the insertion of the clause in brackets by section 4 of the act of March 2, 1895. (28 Stat. L., 817.)

<sup>2</sup> Section 8 of the act of July 31, 1894, provides "that the balances that may be certified from time to time by the Auditors in the settlement of public accounts shall be final and conclusive upon the Executive Departments of the Government, except that any person whose accounts may have been settled, the head of a Department, or of the board, commission, or establishment, not under the jurisdiction of an Executive Department, or the Comptroller of the Treasury may, within a year, obtain a revision of the account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the executive branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account." *Sec. 8, act of July 31, 1894 (28 Stat. L., 207.)*

Section 260 of the Revised Statutes requires that the Secretary of the Treasury shall lay before Congress at the commencement of each regular session, accompanying his annual statement of the public expenditure, the reports which may be made to him by the Auditors charged with the examination of the accounts of the Department of War and the Department of the Navy, respectively, showing the application of the money appropriated for those Departments for the preceding year.

## THE ACCOUNTING OFFICERS.

Par.	Par.
134. The Comptroller of the Treasury.	151. Revision of accounts pending on October 1, 1894.
135. Comptroller to prescribe forms.	152. Secretary of Treasury to make rules for new method of accounting, etc.
136. Comptroller's decision to govern in accounts.	153. Rules to be made by heads of Executive Departments, etc.
137. Comptroller may direct settlement of particular accounts.	154. Comptroller, Auditors, etc., not new offices.
138. Auditors of the Treasury; duties.	155. Transfer of duties to Auditors.
139. Auditor for War Department.	156. Settled claims not to be reopened.
140. Auditors to recover debts.	157. New system of accounting in force October 1, 1894,
141. Certified balances conclusive on Executive Departments.	158. Duties of Auditor for War and Navy Departments.
142. Certificate of differences on revision.	159. Settlement of accounts of Army officers.
143. Accepting payment on Auditor's settlement conclusive. Suspensions.	160. Settlement of advance bounties paid by paymasters.
144. Auditors to preserve accounts.	161. Settlement of overpayments by paymasters.
145. Decisions of Auditors to be examined, etc., by Comptroller.	162. Evidence of honorable discharge to be returned to officers and enlisted men.
146. Requisitions for advances of funds. Warrants.	163. Allowance of lost checks.
147. The Division of Bookkeeping and Warrants.	164. Claims for quartermasters' stores.
148. The Secretary of the Treasury to report delinquents.	165. Claims for subsistence.
149. Examination of certain claims.	
150. Certification of Treasury records.	

## THE COMPTROLLER OF THE TREASURY.

134. The offices of Commissioner of Customs, Deputy Commissioner of Customs, Second Comptroller, Deputy Second Comptroller, and Deputy First Comptroller of the Treasury are abolished, and the First Comptroller of the Treasury shall hereafter be known as Comptroller of the Treasury. He shall perform the same duties and have the same powers and responsibilities (except as modified by this act) as those now performed by or appertaining to the First and Second Comptrollers of the Treasury and the Commissioner of Customs; and all provisions of law not inconsistent with this act, in any way relating to them or either of them, shall hereafter be construed and held as relating to the Comptroller of the Treasury. His salary shall be five thousand five hundred dollars per annum. There shall also be an Assistant Comptroller of the Treasury, to be appointed by the President, with the advice and

The Comptroller of the Treasury.

Sec. 4, July 31, 1894, v. 28, p. 206.

consent of the Senate, who shall receive a salary of five thousand dollars per annum, and a chief clerk in the office of the Comptroller of the Treasury, who shall receive a salary of two thousand five hundred dollars per annum. *Sec. 4, act of July 31, 1894 (28 Stat. L., 206).*

Comptroller to  
prescribe forms,  
etc.  
*Sec. 5, ibid.*

**135.** The Comptroller of the Treasury shall, under the direction of the Secretary of the Treasury, prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues and expenditures therefrom.<sup>1</sup> *Sec. 5, ibid.*

Comptroller's  
decisions to gov-  
ern accounts.  
*Sec. 8, ibid.*

**136.** Disbursing officers, or the head of any Executive Department, or other establishment not under any of the Executive Departments, may apply for and the Comptroller of the Treasury shall render his decision upon any question involving a payment to be made by them or under them, which decision, when rendered, shall govern the Auditor and the Comptroller of the Treasury in passing upon the account containing said disbursement.<sup>2</sup> *Sec. 8, ibid.*

Comptroller  
may direct settle-  
ment of particu-  
lar accounts.  
July 31, 1894,  
v. 28, p. 206.  
*Sec. 6, ibid.*

**137.** The Comptroller of the Treasury, in any case where, in his opinion, the interests of the Government require it, shall direct any of the Auditors forthwith to audit and settle any particular account which such Auditor is  
*Sec. 271, R. S. authorized to audit and settle. Sec. 6, ibid.*

#### THE AUDITORS OF THE TREASURY.

Auditors' of  
the Treasury.  
*Sec. 3, July 31,  
1894, v. 28, p. 206.*

**138.** The Auditors of the Treasury shall hereafter be designated as follows: The First Auditor as Auditor for the Treasury Department; the Second Auditor as Auditor for the War Department; the Third Auditor as Audi-

<sup>1</sup> So much of section 248, Revised Statutes, as authorizes the Secretary of the Treasury to prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenue and expenditures therefrom, is, by section 5 of the act of July 31, 1894, vested in the Comptroller of the Treasury. (28 Stat. L., 206.)

<sup>2</sup> Under the provisions of the act of July 31, 1894, the Comptroller of the Treasury is authorized to render decisions, in advance of the settlement of accounts, only upon the request of a disbursing officer or the head of an Executive Department, as provided in section 8 of said act. 1 Compt. Dec., 87.

Under section 8 of the act of July 31, 1894, the Comptroller of the Treasury is authorized to render decisions, on the application of a disbursing officer or the head of an Executive Department, only upon questions involved in payments to be made by them or under them, and until the head of a Department having control of an appropriation determines to apply it to a particular purpose there is no question which can be properly submitted for the Comptroller's decision. *Ibid.*, 89. The Comptroller is not authorized to render a decision at the request of the Secretary of the Treasury when the question involved concerns the use of an appropriation under the control of the Secretary of War. *Ibid.*, 317.

When an expense has not yet been incurred, and a decision of the Comptroller is desired for the guidance of a Department, the request therefor should be presented by the head of the Department having control of the appropriation, and not by the disbursing officer. *Ibid.*, 500.

Under section 8 of this statute, authorizing an application by the head of an Executive Department to the Comptroller of the Treasury for the revision of an account settled by an Auditor, the Comptroller has no jurisdiction to entertain such an application when made by the head of a Bureau of a Department. *Ibid.*, 199. Nor can such a decision be rendered upon the application of an Auditor. *Ibid.*, 78.

Requests for the decision of the Comptroller under section 8 of the act of July 31, 1894, must be made by the disbursing officer himself, and not by an attorney authorized to represent him in the settlement of his account. *Ibid.*, 502. The Comptroller is authorized to render a decision upon the request of a disbursing officer only when the question submitted is one involved in a payment which he has been directed, by general or special order, to make. *Ibid.*, 500.

tor for the Interior Department; the Fourth Auditor as Auditor for the Navy Department; the Fifth Auditor as Auditor for the State and other Departments; the Sixth Auditor as Auditor of the Post-Office Department. The designations of the deputy auditors and other subordinates shall correspond with those of the Auditors. And each deputy auditor, in addition to the duties now required to be performed by him, shall sign, in the name of the Auditor, such letters and papers as the Auditor may direct. *Sec. 3, act of July 31, 1894 (28 Stat. L., 206).*

Duties.

**139.** Accounts shall be examined by the Auditors as follows: \* \* \* Second. The Auditor for the War Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of War and all bureaus and offices under his direction, all accounts<sup>1</sup> relating to the military establishment, armories and arsenals, national cemeteries, fortifications, public buildings and grounds under the Chief of Engineers, rivers and harbors, the Military Academy, and to all other business within the jurisdiction of the Department of War, and certify the balances arising thereon to the Division of Bookkeeping and Warrants, and send forthwith a copy of each certificate to the Secretary of War.<sup>2</sup> *Sec. 7, ibid.*

Auditor for War Department.  
*Sec. 7, ibid.*

**140.** The Auditors, under the direction of the Comptroller of the Treasury, shall superintend the recovery of all debts finally certified by them, respectively, to be due to the United States. *Sec. 4, ibid.*

Auditors to recover debts.  
*Sec. 4, ibid.*

**141.** The balances which may from time to time be certified by the Auditors to the Division of Bookkeeping and Warrants, or to the Postmaster-General, upon the settlements of public accounts, shall be final and conclusive upon the Executive Branch of the Government, except that any

Certified balances conclusive on Executive Departments, etc.  
*Sec. 8, ibid.*

<sup>1</sup>An account is something which may be adjusted and liquidated by an arithmetical computation. One set of Treasury officers examine and audit the accounts; another set is intrusted with the power of reviewing that examination and with the further power of determining whether the laws authorize the payment of the account when liquidated. But no law authorizes Treasury officials to allow and pass in accounts a number not the result of arithmetical computation, upon a subject within the operation of the mutual part of a contract. *Power v. U. S.*, 18 C. Cls. R., 263, 275. A voucher given by an officer of the Government, in the regular and ordinary course of his business, for services rendered, or articles purchased for the public service, within the scope of his authority and the line of his duty unimpeached, is prima facie evidence of indebtedness on the part of the United States, as therein stated. *Parish v. U. S.*, 2 C. Cls. R., 341; *Solomon v. U. S.*, 19 Wall., 17; and 9 C. Cls. R., 54. In this respect the executive officers who are authorized to make contracts, employ services, or purchase property for the public service, and whose duty it is to see to it that the money certified by them to be due has been actually and fairly earned, within their own knowledge, while acting in their official capacity, differ from the certified balances of the accounting officers. In the examination of claims in the Treasury Department these accounting officers act wholly upon the evidence presented to them by others, and have themselves no personal knowledge of the facts upon which the claims are founded. It is one of the fundamental principles upon which that Department is established, and a useful and nice one it is, that the executive officers who pass upon public accounts shall be different from those who are authorized to make contracts and incur liabilities in the expenditure of public money. *McCann v. U. S.*, 18 C. Cls. R., 445, 447. The accounts under a contract remain open so long as anything remains to be adjusted or paid. *Parker v. U. S.*, 26 C. Cls. R., 344.

<sup>2</sup>For additional duties of this officer see paragraph 158 *post*.



person whose accounts may have been settled, the head of the Executive Department, or of the board, commission, or establishment not under the jurisdiction of an Executive Department, to which the account pertains, or the Comptroller of the Treasury, may, within a year, obtain a revision of the said account by the Comptroller of the Treasury, whose decision upon such revision shall be final and conclusive upon the Executive Branch of the Government: *Provided*, That the Secretary of the Treasury may, when in his judgment the interests of the Government require it, suspend payment and direct the reexamination of any account. \* \* \* Sections one hundred and ninety-one and two hundred and seventy of the Revised Statutes are repealed.<sup>1</sup> *Sec. 8, ibid.*

Revision

Reexamina-  
tions.Certificate of  
differences on re-  
vision.  
*Sec. 8, ibid.*

142. Upon a certificate by the Comptroller of the Treasury of any differences ascertained by him upon revision the Auditor who shall have audited the account shall state an account of such differences, and certify it to the Division of Bookkeeping and Warrants, except that balances found and accounts stated as aforesaid by the Auditor for the Post-Office Department for postal revenues and expenditures therefrom shall be certified to the Postmaster-General. *Sec. 8, ibid.*

Accepting pay-  
ment on Audi-  
tor's settlement  
conclusive.

143. Any person accepting payment under a settlement by an Auditor shall be thereby precluded from obtaining a revision of such settlement as to any items upon which pay-

<sup>1</sup> This paragraph expressly repeals section 1 of the act of March 30, 1868 (sec. 191, Rev. Stat.). The clause "shall be conclusive upon the Executive Departments of the Government," which formed a part of the repealed section, was enacted to settle a long-pending dispute between the accounting officers and the heads of Departments as to their respective powers over claims and accounts, and has been interpreted to relate "only to matters of accounting in the Treasury Department, and of ascertaining the balance, in each particular account which shall be drawn from the Treasury." \* \* \* It makes conclusive upon the Executive Branch of the Government only the 'balances' stated by the accounting officers and their 'decision thereon' for the purpose of determining for what amounts, if any, warrants may be drawn on the Treasury. \* \* \* It does not make such decisions conclusive upon the head of a Department in the exercise of his discretion as to orders to be issued to his subordinates in such connections as the one now under consideration." *Billings v. U. S.*, 23 C. Cls. R., 166; *McKee v. United States*, 12 *ibid.*, 504. It was held in the case of *Surgeon Billings* (23 C. Cls. R., 166) that the War Department had authority to send a surgeon to the International Medical Congress, at London, at the expense of the Government, that being a military service which a surgeon could be required to render. In the case of *Paymaster Smith* (24 C. Cls. R., 209), it was held that the employment of experts before a court-martial was within the legal and proper discretion of the Secretary of War. In the case of *The United States v. Jones* (18 How., 92, 95) the court held "that the Secretary of the Navy represents the President, and exercises his power on the subjects confided to his Department. He is responsible to the people and to the law for any abuse of the powers intrusted to him. His acts and decisions on subjects submitted to his jurisdiction and control by the Constitution and laws do not require the approval of any officer of any other Department to make them valid and conclusive. The accounting officers of the Treasury have not the burden cast upon them of reviewing the judgments, correcting the supposed mistakes, or annulling the orders of the heads of Departments." See, also, *U. S. v. McDaniel*, 7 Pet., 1, 14; *U. S. v. Eliason*, 16 Pet., 291; *Brown v. U. S.*, 113 U. S., 568, 571; *Edwards v. Darby*, 12 Wheat., 206; *U. S. v. Pugh*, 99 U. S., 265; *Parkhurst v. U. S.*, 29 C. Cls. R., 399.

When the Government is estopped from further controverting a question adjudicated by a court of competent jurisdiction it is the duty of the accounting officers to follow the decision in subsequent settlements of the parties' accounts. The legislation of Congress and the decisions of the Supreme Court unmistakably indicate that judgments of this court, not appealed from, are obligatory upon the Government as upon the claimant, and are intended to be guides and precedents for the Executive Departments. *Meigs v. U. S.*, 20 C. Cls. R., 181; *U. S. v. O'Grady*, 22 Wall., 641.

*Administrative discretion in expenditures.*—Ordinarily, where discretionary power

ment is accepted; but nothing in this act shall prevent an Auditor from suspending items in an account in order to obtain further evidence or explanations necessary to their settlement. When suspended items are finally settled a revision may be had as in the case of the original settlement. Action upon any account or business shall not be delayed awaiting applications for revision.<sup>1</sup> *Provided*, That the Secretary of the Treasury shall make regulations fixing the time which shall expire before a warrant is issued in payment of an account certified as provided in sections seven and eight of this act. *Sec. 8, ibid.*

Suspensions,  
Sec. 8, *ibid.*

144. The Auditors shall, under the direction of the Comptroller of the Treasury, preserve with their vouchers and certificates, all accounts which have been finally adjusted. *Sec. 8, ibid.*

Auditors to pre-  
serve accounts.  
Sec. 8, *ibid.*

145. All decisions by Auditors making an original construction or modifying an existing construction of statutes shall be forthwith reported to the Comptroller of the Treasury, and items in any account affected by such decisions shall be suspended and payment thereof withheld until the Comptroller of the Treasury shall approve, disapprove, or modify such decisions and certify his actions to the Auditor. All decisions made by the Comptroller of the Treasury under this act shall be forthwith transmitted to the Auditor or Auditors whose duties are affected thereby.<sup>1</sup> *Sec. 8, ibid.*

Decisions of  
Auditors to be  
examined, etc.,  
by Comptroller,  
Sec. 8, *ibid.*

is lodged in a judicial officer, his decision is not reviewable save by the court of which he is a member, and then only when there has been a clear abuse of the discretion committed to him. Far more cogent reasons exist why this rule should be applied to administrative officers, who are empowered to use their discretion as to the manner in which public moneys shall be expended, for great embarrassment and confusion might result if officers in one Executive Department could sit in judgment upon the decisions of the officers of another Executive Department in cases involving the exercise of judgment and discretion. 3 Dig. Compt. Dec., 21. Wherever the exercise of discretion by the War Department in disbursing moneys appropriated for the support of the Army is permitted by a statute, the manner in which such discretion has been exercised is a matter of administration with which the accounting officers have no concern. It is the province of the military authorities to determine the needs of a given military depot or post and the quantity of a specified article to be allotted to said depot or post, while it is the province of the accounting officers to determine whether or not Congress has made an appropriation covering a specific expenditure, or whether or not such expenditure was made in conformity with law. *Ibid.*, 21. The degree of wisdom displayed in the exercise of the discretion given an officer of the Army, under the authority of the Secretary of War, is not a subject for review by the accounting officers. If the officer is responsible for his action in the premises to any one, it is to the source from which he derived his authority. *Ibid.*, 22.

The evidence required by the War Department from the disbursing officers and agents of the Army for administrative purposes is a matter peculiarly within the jurisdiction of the Secretary of War. *Ibid.*, 497.

<sup>1</sup> Under the act of July 31, 1894, the Auditors of the Treasury are not authorized to render decisions in advance of the settlement of accounts, such authority being, by section 8 of said act, granted only to the Comptroller of the Treasury. (1 Compt. Dec., 94.)

Under section 8 of the act of July 31, 1894, an appeal will not lie to the Comptroller of the Treasury except from the final certificate of an Auditor. A suspension of action upon a case by an Auditor is not a final decision of such officer. *Ibid.*, 381. An appeal to the Comptroller from the action of an Auditor will not lie until the Auditor has taken final action in the case. A suspension for further evidence is not a final decision upon which an appeal can be based. (*Ibid.*, 448, 500.)

Under the act of July 31, 1894, an Auditor has no jurisdiction to review his own final action in the settlement of an account, but such settlement can be reopened only on a revision thereof by the Comptroller of the Treasury within a year, as provided in section 8 of said act. (*Ibid.*, 27.)

Requisitions  
for advances of  
funds.  
Sec. 11, *ibid.*

146. Every requisition for an advance of money<sup>1</sup> before being acted on by the Secretary of the Treasury, shall be sent to the proper Auditor for action thereon as required by section twelve of this act.

Warrants.

All warrants, when authorized by law and signed by the Secretary of the Treasury, shall be countersigned by the Comptroller of the Treasury, and all warrants for the payment of money shall be accompanied either by the Auditor's certificate, mentioned in section seven of this act, or by the requisition for advance of money, which certificate or requisition shall specify the particular appropriation to which the same should be charged, instead of being specified on the warrant, as now provided by section thirty-six hundred and seventy five of the Revised Statutes; and shall also go with the warrant to the Treasurer, who shall return the certificate or requisition to the proper Auditor, with the date and amount of the draft issued indorsed thereon. Requisitions for the payment of money on all audited accounts, or for covering money into the Treasury, shall not hereafter be required. And requisitions for advances of money shall not be countersigned by the Comptroller of the Treasury. *Sec. 11, ibid.*

The Division of  
Bookkeeping and  
Warrants.  
Sec. 10, *ibid.*

147. The Division of Warrants, Estimates, and Appropriations in the office of the Secretary of the Treasury is hereby recognized and established as the Division of Bookkeeping and Warrants. It shall be under the direction of the Secretary of the Treasury as heretofore. Upon the books of this division shall be kept all accounts of receipts and expenditures of public money except those relating to the postal revenues and expenditures therefrom; and sections three hundred and thirteen and so much of sections two hundred and eighty-three and thirty-six hundred and eighty-five of the Revised Statutes as require those accounts to be kept by certain Auditors and the Register of the Treasury are repealed. The duties of the Register of the Treasury shall be such as are now required of him in connection with the public debt and such further duties as may be prescribed by the Secretary of the Treasury. *Sec. 10, ibid.*

Secretary of  
Treasury to re-  
port delinquents.  
Sec. 12, *ibid.*

148. The Secretary of the Treasury shall, on the first Monday of January in each year, make report to Congress of such officers as are then delinquent in the rendering their accounts or in the payment of balances found due from them for the last preceding fiscal year. *Sec. 12, ibid.*

<sup>1</sup>Section 8 of the act of July 31, 1894, has no application to questions respecting the advance of funds which, under this section, are subject to the decision of the Auditor, with a review by the Secretary of the Treasury. 1 Compt Dec. 409.

149. In the case of claims presented to an Auditor which have not had an administrative examination, the Auditor shall cause them to be examined by two of his subordinates independently of each other. *Sec. 14, ibid.*

Examination  
of certain claims.  
*Sec. 14, ibid.*

150. The transcripts from the books and proceedings of the Department of the Treasury, and the copies of bonds, contracts, and other papers, provided for in section eight hundred and eighty-six of the Revised Statutes, shall hereafter be certified by the Secretary or an Assistant Secretary of the Treasury under the seal of the Department. *Sec. 17, ibid., as amended by Sec. 10, act of March 2, 1895 (28 Stat. L., 809).*

Certification of  
Treasury rec-  
ords, etc.  
*Sec. 886, R. S.*  
*Sec. 17, ibid.*  
*Sec. 10, Mar. 2,*  
*1895, v. 28, p. 809.*

151. All accounts stated by the Auditors before the first day of October, eighteen hundred and ninety-four, and then pending for settlement in the offices of the First or Second Comptroller, or the Commissioner of Customs, shall be revised by the Comptroller of the Treasury in the manner provided by existing law, and the balances arising thereon shall be certified to the Division of Bookkeeping and Warrants. *Sec. 21, ibid.*

Revision of ac-  
counts pending  
on Oct. 1, 184.  
*Sec. 21, ibid.*

152. It shall be the duty of the Secretary of the Treasury to make appropriate rules and regulations for carrying out the provisions of this act, and for transferring or preserving books, papers, or other property appertaining to any office or branch of business affected by it. *Sec. 22, ibid.*

Secretary of  
Treasury to  
make rules for  
new methods of  
accounting, etc.  
*Sec. 22, ibid.*

153. It shall also be the duty of the heads of the several Executive Departments and of the proper officers of other Government establishments, not within the jurisdiction of any Executive Department, to make appropriate rules and regulations to secure a proper administrative examination of all accounts sent to them, as required by section twelve of this act, before the transmission to the Auditors, and for the execution of other requirements of this act in so far as the same relate to the several Departments or establishments. *Sec. 22, ibid.*

Rules, etc., by  
Heads of Depart-  
ments, etc.  
*Sec. 22, ibid.*

154. This act, so far as it relates to the First Comptroller of the Treasury and the several Auditors and Deputy Auditors of the Treasury, shall be held and construed to operate merely as changing and their designations and adding to and modifying their duties and powers, and not as creating new officers. *Sec. 9, ibid.*

Comptroller,  
Auditors, etc.,  
not new offices.  
*Sec. 9, ibid.*

155. All laws not inconsistent with this act, relating to the Auditors of the Treasury in connection with any matter shall be understood in each case to relate to the Auditor to whom this act assigns the business of the Executive Department or other establishments concerned in that matter. *Sec. 9, ibid.*

Transfer of  
duties to Audi-  
tors.  
*Sec. 9, ibid.*

Settled claims  
not reopened.  
Sec. 23, *ibid.*

156. Nothing in this act shall be construed to authorize the reexamination and payment of any claim or account which has heretofore been disallowed or settled. *Sec. 23, ibid.*

New account-  
ing system in  
force October 1,  
1894.

Sec. 24, *ibid.*

157. The provisions of sections three to twenty-three inclusive of this act shall be in force on and after the first day of October, eighteen hundred and ninety-four.<sup>1</sup> *Sec. 24, ibid.*

Duties of Audi-  
tors for War and  
Navy Depart-  
ments.

Mar. 3, 1817, c.  
45, ss. 5, 6, v. 3, p.  
367.

Sec. 283, R. S.

158. The Auditors charged with the examination of the accounts of the Departments of War and of the Navy, shall keep all accounts of the receipts and expenditures of the public money in regard to those Departments, and of all debts due to the United States on moneys advanced relative to those Departments; shall receive from the Comptroller the accounts which shall have been finally adjusted, and shall preserve such accounts, with their vouchers and certificates, and record all requisitions drawn by the Secretaries of those Departments, the examination of the accounts of which has been assigned to them. They shall annually, on the first Monday in November, severally report to the Secretary of the Treasury the application of the money appropriated for the Department of War and the Department of the Navy, and they shall make such reports on the business assigned to them as the Secretaries of those Departments may deem necessary and require.

Settlement of  
accounts of  
army officers.  
Mar. 29, 1867,  
Res. No. 22, v. 15,  
p. 25.

Sec. 278, R. S.

159. The Second Auditor shall audit and settle the accounts of line officers of the Army, to the extent of the pay due them for their services as such, notwithstanding the inability of any such line officer to account for property intrusted to his possession, or to make his monthly reports or returns, if such Auditor shall be satisfied by the affidavit of the officer or otherwise that the inability was caused by the officer's having been a prisoner in the hands of the enemy, or by any accident or casualty of war.<sup>2</sup>

Settlement of  
advance boun-  
ties paid by pay-  
masters.

160. Any moneys paid by a paymaster in the Army to an enlisted man as an advance bounty shall be allowed in the settlement of the accounts of the paymaster, notwith-

<sup>1</sup> For section 3 of the act of July 31, 1894, see paragraph 138; for section 4 of the same statute see paragraph 134; for section 5 see paragraph 135; for section 6 see paragraph 137; for section 7 see paragraph 139; for section 8 see paragraphs 136, 141, 142, 143, 144, and 145; for section 9 see paragraphs 154 and 155; for section 10 see paragraph 147; for section 11 see paragraph 146; for section 12 see paragraphs 132 and 148; for section 14 see paragraph 149; for section 17 see paragraph 150; for section 21 see paragraph 151; for section 22 see paragraphs 152 and 153; for section 23 see paragraph 156. Section 13 relates to the accounts of certain subordinate officers of the Department of Justice; section 15 to an annual report of expenditures to be rendered to Congress by the Secretary of the Treasury; sections 16, 18, and 19 amend sections 307, 2639, and 3743 of the Revised Statutes; section 20 relates to the duties of collectors of customs.

<sup>2</sup> The duties of the Second Auditor of the Treasury were, by section 7 of the act of July 31, 1894 (28 Stat. L., 206), devolved on the Auditor of the Treasury for the War Department.

standing the discharge of such enlisted man before serving the time required by law to entitle him to payment of such moneys. Mar. 3, 1863, c. 78, s. 6, v. 12, p. 743.

Sec. 280, R. S.

161. The proper accounting officers are authorized, in the settlement of the accounts of the paymasters of the Army, to allow such credits for overpayments made in good faith on public account, since the fourteenth day of April, eighteen hundred and sixty-one, and before the sixteenth day of March, eighteen hundred and sixty-eight, as shall appear to them, by such vouchers and testimony as they shall require, to be just. Settlement of overpayments by paymasters. Mar. 16, 1868, c. 29, v. 15, p. 42.

Sec. 281, R. S.

162. In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States, to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered. Evidence of honorable discharge to be returned to officers and enlisted men. May 4, 1870, Res. No. 42, v. 16, p. 374.

Sec. 282, R. S.

163. Whenever the disbursing officer, or agent by whom was issued any check which has been lost, destroyed, or stolen, is dead, or no longer in the service of the United States, the proper accounting officer shall, under such regulations as the Secretary of the Treasury may prescribe, state an account in favor of the owner of such original check for the amount thereof, and charge such amount to the account of such officer or agent.<sup>1</sup> Allowance of lost checks. Feb. 2, 1872, c. 12, ss. 1, 2, v. 17, p. 29.

Sec. 300, R. S.

164. All claims of loyal citizens in States not in rebellion, for quartermaster's stores actually furnished to the Army of the United States, and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Quartermaster-General of the United States, accompanied with such proofs as each claimant can present of the facts in his case; and it shall be the duty of the Quartermaster-General to cause such claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have been actually received, or taken for the use of, and used by the Army, then to report each case to the Third Auditor of the Treasury, with a recommendation for settlement.<sup>2</sup> Claims for quartermaster's stores. Feb. 18, 1875, v. 18, p. 316.

Sec. 300 A, R. S.

<sup>1</sup>See also section 3646, Revised Statutes, as amended by the act of February 16, 1885 (23 Stat. L., 306), paragraph 515, *post*.

<sup>2</sup>Section 2 of the act of June 16, 1874 (18 Stat L., 75), contained a provision that the

Claims for subsistence.  
Feb. 18, 1875, v.  
18 p. 316.

Sec. 300 B, R. S.

165. All claims of loyal citizens in States not in rebellion for subsistence actually furnished to the Army and receipted for by the proper officer receiving the same, or which may have been taken by such officers without giving such receipt, may be submitted to the Commissary-General of Subsistence, accompanied by such proof as each claimant may have to offer; and it shall be the duty of the Commissary-General of Subsistence to cause each claim to be examined, and if convinced that it is just, and of the loyalty of the claimant, and that the stores have actually been received, or taken for the use of, and used by the Army, then to report each case for payment to the Third Auditor of the Treasury with a recommendation for settlement.

The provisions of the above two sections shall extend to the State of Tennessee, and to the counties of Berkeley and Jefferson in the State of West Virginia. But the provisions of the above two sections shall not authorize the payment of claims for the occupation of, or injury to, real estate in any State declared in insurrection during the rebellion.<sup>1</sup> *Act of February 18, 1875 (18 Stat. L., 316).*

#### ESTIMATES AND APPROPRIATIONS.

Par.	Par.
166. Manner of communicating estimates.	175. Requisitions for War and Navy Departments.
167. Estimates for printing and binding.	176. Application of moneys appropriated.
168. Estimates for salaries.	177. No expenditures beyond appropriations.
169. Estimates for public works.	178. Expenses of commissions and inquiries.
170. Additional explanations required.	179. Restrictions on contingent, etc., appropriations.
171. Amount of outstanding appropriations to be designated.	180. Permanent appropriations.
172. Estimates to be submitted to Congress.	181. Application of balances of appropriations.
173. Statements to accompany estimates.	182. Disposal of balances after two years.
174. Statement of proceeds of sales of old material.	183. Proceeds of certain sales, etc., of material.

Quartermaster-General and the Commissary-General of Subsistence should continue to act upon claims under the act of July 4, 1864, and to report the same to the Secretary of the Treasury for submission to Congress. The jurisdiction thus conferred was finally withdrawn by the act of March 3, 1883, which contained the following provision: "That hereafter no part of the sums appropriated for the Subsistence and Quartermaster's Departments of the Army shall be used or expended in the investigation of claims under the act of July fourth, eighteen hundred and sixty-four, entitled 'An act to restrict the jurisdiction of the Court of Claims, and to provide for the payment of certain demands for quartermaster's stores and subsistence supplies furnished to the Army of the United States,' and acts and resolutions amendatory thereof and supplementary thereto." (Act of March 3, 1883, 22 Stat. L., 457.) See also the Bowman Act, paragraphs 332 to 338, *post*.

<sup>1</sup> For statutory provisions respecting the withdrawal of the jurisdiction conferred by this section see note 2 to paragraph 164, *ante*.

166. The heads of Departments, in communicating estimates of expenditures and appropriations to Congress, or to any of the committees thereof, shall specify, as nearly as may be convenient, the sources from which such estimates are derived, and the calculations upon which they are founded, and shall discriminate between such estimates as are conjectural in their character and such as are framed upon actual information and applications from disbursing officers. They shall also give references to any law or treaty by which the proposed expenditures are, respectively, authorized, specifying the date of each, and the volume and page of the Statutes at Large, or of the Revised Statutes, as the case may be, and the section of the act in which the authority is to be found.<sup>1</sup> *Sec. 3660, R. S.*

Manner of communicating estimates.

Aug. 26, 1842, c. 202, s. 14, v. 5, p. 525; Mar. 3, 1875, c. 129, s. 3, v. 18, p. 370.

*Sec. 3660, R. S.*

167. The head of each of the Executive Departments, and every other public officer who is authorized to have printing and binding done at the Congressional Printing Office for the use of his Department or public office, shall include in his annual estimate for appropriations for the next fiscal year such sum or sums as may to him seem necessary "for printing and binding, to be executed under the direction of the Congressional Printer."

Estimates for printing and binding.

May 8, 1872, c. 140, s. 2, v. 17, p. 82.

*Sec. 3661, R. S.*

168. All estimates for the compensation of officers authorized by law to be employed shall be founded upon the express provisions of law, and not upon the authority of executive distribution.<sup>2</sup>

Estimates for salaries.

Mar. 3, 1855, c. 175, s. 8, v. 10, p. 670.

*Sec. 3662, R. S.*

169. Whenever any estimate submitted to Congress by the head of a Department asks an appropriation for any new specific expenditure, such as the erection of a public building, or the construction of any public work, requiring a plan before the building or work can be properly completed, such estimate shall be accompanied by full plans

Estimates for public works.

June 17, 1844, c. 105, s. 2, v. 5, p. 693; Mar. 3, 1855, c. 175, s. 8, v. 10, p. 670; Feb. 27, 1877, v. 19, p. 249.

*Sec. 3663, R. S.*

<sup>1</sup>The policy of Congress in respect to annual appropriations is contained in sections 3660, 3664, 3665, 3675, 3678, 3679, and 3690 of the Revised Statutes. A reading of their provisions will show conclusively, we think, that Congress has restricted in every possible way the expenditures and expenses and liabilities of the Government, so far as executive officers are concerned, to the specific appropriations of each fiscal year. *Wilder v. U. S.*, 16 C. Cls. R., 528, 543. The estimates must relate to expenditures based upon the enactments of Congress and not to the payment of damages. *Pitman v. U. S.*, 20 *ibid.*, 253, 256. And to expenditures for the public service during the ensuing fiscal year. *McCallum v. United States*, 17 *ibid.*, 92; *Conn. Mut. Life Ins. Co. v. U. S.*, 21 *ibid.*, 195, 200.

<sup>2</sup>A statute which fixes the annual salary of a public officer at a designated sum, without limitation as to time, is not abrogated by subsequent enactments appropriating a less amount for his services for a particular fiscal year, but containing no words which expressly or impliedly repeal it. *U. S. v. Langston*, 118 U. S., 389. It is otherwise, however, when the sum appropriated is "in full compensation" for the salary of a particular officer, in which case the earlier act is suspended for the time covered by the appropriation. *U. S. v. Fisher*, 109 U. S., 143; *U. S. v. Mitchell*, *ibid.*, 146. A salary that is established by statute can not be increased nor diminished by executive officers. It is not a subject of contract between such officers. The incumbent of an office is entitled to the salary attached thereto by law, and, if he receives a less sum from disbursing officers, he can claim and receive the balance. *Dyer v. U. S.*, 20 C. Cls. R., 166, 171; *Adams v. U. S.*, *ibid.*, 115. Such recovery may be had though, by the terms of his appointment, he was to receive less and though he may have been compelled to execute a receipt in full therefor. *Ibid.*



and detailed estimates of the cost of the whole work. All subsequent estimates for any such work shall state the original estimated cost, the aggregate amount theretofore appropriated for the same, and the amount actually expended thereupon, as well as the amount asked for the current year for which such estimate is made. And if the amount asked is in excess of the original estimate, the full reasons for the excess and the extent of the anticipated excess shall be also stated. (*See sec. 3734, R. S.*)

Additional explanations required.  
*Ibid.*

Sec. 3664, R. S.

170. Whenever the head of a Department, being about to submit to Congress the annual estimates of expenditures required for the coming year, finds that the usual items of such estimates vary materially in amount from the appropriation ordinarily asked for the object named, and especially from the appropriation granted for the same objects for the preceding year, and whenever new items not theretofore usual are introduced into such estimates for any year, he shall accompany the estimates by minute and full explanations of all such variations and new items, showing the reasons and grounds upon which the amounts are required, and the different items added.

Amount of outstanding appropriations to be designated.

June 2, 1858, c. 82, s. 2, v. 11, p. 308.

Sec. 3665, R. S.

171. The head of each Department, in submitting to Congress his estimates of expenditures required in his Department during the year then approaching, shall designate not only the amount required to be appropriated for the next fiscal year, but also the amount of the outstanding appropriation, if there be any, which will probably be required for each particular item of expenditure.

Estimates to be submitted to Congress.

Sept. 2, 1789, c. 12, s. 2, v. 1, p. 65; Mar. 10, 1800, c. 58, v. 2, pp. 79, 80; Jan. 7, 1846, Res. 2, v. 9, p. 108; Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; May 18, 1865, c. 85, s. 4, v. 14, p. 49; June 20, 1874, c. 328, v. 18, pp. 96, 109, 111; Mar. 3, 1875, c. 129, v. 18, pp. 355, 370; Aug. 15, 1876, c. 289, s. 4, v. p. 200.

172. All annual estimates for the public service shall be submitted to Congress through the Secretary of the Treasury, and shall be included in the Book of Estimates prepared under his direction.

Sec. 3669, R. S.

Statements to accompany estimates.

May 1, 1820, c. 52, s. 8, v. 3, p. 568; June 20, 1874, c. 328, v. 18, p. 96.

Sec. 3670, R. S.

Statement of proceeds of sales of old material.

May 8, 1872, c. 140, s. 5, v. 17, p. 83; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3672, R. S.

Requisitions for War and Navy Departments.

173. The Secretary of the Treasury shall annex to the annual estimates of the appropriations required for the public service, a statement of the appropriations for the service of the year, which may have been made by former acts.

174. A detailed statement of the proceeds of all sales of old material, condemned stores, supplies, or other public property of any kind except materials, stores, or supplies sold to officers and soldiers of the Army, or to exploring or surveying expeditions authorized by law shall be included in the appendix to the Book of Estimates.

175. All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by

warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those Departments, respectively, countersigned by the Second Comptroller of the Treasury, and registered by the proper Auditor. (*See secs. 273, 277, R. S.*)

**176.** All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others.<sup>1</sup>

**177.** No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations.<sup>2</sup> (*See secs. 3733, 5503, and 3732, R. S.*)

**178.** No accounting or disbursing officer of the Government shall allow or pay any account or charge whatever, growing out of, or in any way connected with, any commission or inquiry, except courts-martial or courts of inquiry in the military or naval service of the United States, until special appropriations shall have been made by law to pay such accounts and charges. This section, however, shall not extend to the contingent fund connected with the foreign intercourse of the Government, placed at the disposal of the President.

**179.** No moneys appropriated for contingent, incidental, or miscellaneous purposes shall be expended or paid for official or clerical compensation.

<sup>1</sup>An appropriation by Congress of a given sum of money for a named purpose is not the designation of a specific fund for that purpose, but simply a legal authority to apply so much of any money in the Treasury to the indicated object. Every appropriation for the payment of a particular demand, or a class of demands, necessarily involves and includes the recognition by Congress of the legality and justice of each demand and is equivalent to an express mandate to the Treasury officers to pay it. This recognition is not affected by any previous adverse action of Congress, for the last expression by that body supersedes all such previous action. *Hukill v. U. S.*, 16 C. Cls. R., 562, 585. When an appropriation has been made by Congress for a general purpose, contemplating a multitude of acts to be done by the Department, its authority is general within those limits. *Leavitt v. U. S.*, 34 F. R., 623. When an alleged liability of the Government rests wholly upon an appropriation, they must stand or fall together, so that when the latter is exhausted the former comes to an end. *Shipman v. U. S.*, 18 C. Cls. R., 138.

<sup>2</sup>The legal liability of the Government does not generally depend upon appropriations. The constitutional provision, in article 1, section 9, that "no money shall be drawn from the Treasury but in consequence of appropriations made by law," is a mere limitation and restriction upon the executive officers of the Treasury Department, and does not prevent Congress, the law-making power, from involving the Government in contracts to pay money to any extent. When such contracts are made, the parties who acquire rights to compensation thereunder must wait until an appropriation is made before they can receive their money, but the right on their part and the obligation on the part of the United States remain unchanged. Failing to obtain direct appropriations for their benefit, public creditors may sue in this court and thus obtain payment out of any money appropriated for the payment and satisfaction of private claims. *Mitchell v. U. S.*, 18 C. Cls. R., 281, 286. The excepting clause in section 3732, Revised Statutes (a) in relation to contracts for and purchases of clothing, subsistence, forage, fuel, quarters, etc., operates to withdraw such contracts and purchases from the prohibition contained in this paragraph in relation to expenditures in excess of the appropriations for a particular fiscal year, and such purchases may be made, provided the necessities of the current fiscal year be not exceeded.

a See the chapter entitled CONTRACTS AND PURCHASES.

Mar. 3, 1817, c. 45, ss. 5, 9, v. 3, p. 367; May 7, 1822, c. 90, s. 3, v. 3, p. 689; Mar. 4, 1874, c. 44, v. 18, p. 19.

Sec. 3673, R. S.

Application of moneys appropriated.

Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535; Feb. 12, 1868, c. 8, s. 2, v. 15, p. 36.

Sec. 3678, R. S.

No expenditures beyond appropriations.

July 12, 1870, c. 251, s. 7, v. 16, p. 251.

Sec. 3679, R. S.

Expenses of commissions and inquiries.

Aug. 26, 1842, c. 202, s. 25, v. 5, p. 533.

Sec. 3681, R. S.

Restrictions on contingent, etc., appropriations.

July 12, 1870, c. 251, s. 3, v. 16, p. 250.

Sec. 3682, R. S.

PERMANENT ANNUAL APPROPRIATIONS.<sup>1</sup>

Permanent ap-  
propriations.

Sec. 3689, R. S.

180. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriations shall be deemed permanent annual appropriations.

## UNDER THE WAR DEPARTMENT.

## Bounty to soldiers:

July 28, 1866, c.  
296, s. 12, v. 14, p.  
322; Apr. 22, 1872,  
c. 114, v. 17, p. 55.

For payment of bounties to soldiers, or their widows or legal heirs, under the twelfth, thirteenth, fourteenth, fifteenth, and sixteenth sections of "An act making appropriations for sundry civil expenses of the Government for the year ending June thirty, eighteen hundred and sixty-seven, and for other purposes."

## Support of National Asylum for Disabled Volunteer Soldiers:

Mar. 21, 1866, c.  
21, s. 5, v. 14, p. 10;  
Jan. 23, 1873, c. 51,  
s. 1, v. 17, p. 417.

Of all stoppages or fines adjudged against volunteer officers and soldiers by sentence of court-martial or military commission, over and above the amount necessary for the reimbursement of the Government or individuals, all forfeitures on account of desertion from such service, and all moneys due such deceased officers and soldiers which are or may be unclaimed for three years after the death of such officers and soldiers, to be repaid upon the demand of the heirs or legal representatives of such deceased officers and soldiers, to be used for the establishment and support of the National Asylum for Disabled Volunteer Soldiers. (*See sec. 4825 Rev. Stat.*)

## Soldiers' Home:

Mar. 3, 1851, c.  
25, s. 7, v. 9, p. 596;  
July 5, 1862, c.  
133, s. 2, v. 12, p.  
508.

Of all stoppages or fines adjudged against soldiers by sentence of court-martials, over and above any amount that may be due for the reimbursement of Government or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which now are or may hereafter be unclaimed for the period of three years subsequent to the death of said soldier or soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased.

Mar. 3, 1849, c.  
129, ss. 2, 6, v. 9,  
pp. 415, 416; Mar.  
3, 1863, c. 78, s. 5,  
v. 12, p. 743.

## Horses and other property lost in military service:

To pay for horses, mules, oxen, wagons, carts, sleighs, harness, steamboats, and other vessels, railroad-engines and railroad-cars, killed, lost, captured, destroyed, or aban-

<sup>1</sup> Permanent appropriations are those made for an unlimited period; indefinite appropriations are those in which no amount is named. 13 Opin. Att. Gen., 289.

done while in the military service under the provisions of Title "DEBTS DUE BY OR TO THE UNITED STATES."

Payment to certain military organizations in Kansas: Apr. 12, 1871, c. 12, ss. 1, 2, v. 17, pp. 641, 642.

To pay to the members of the military organizations known as the Westport Police Guards, Hickman's Mills Company, and Companies A, B, C, D, and E, of the Kansas City Station Guards, under private act of April twelve, eighteen hundred and seventy-one, chapter twelve, the pay and allowances of volunteers in the service of the United States.

Traveling expenses of California and Nevada volunteers:

To pay for the traveling expenses of such California and Nevada volunteers as were discharged in New Mexico, Arizona, or Utah, and at points distant from the place or places of enlistment, such proportionate sum, according to the distance traveled, as has been paid to the troops of other States similarly situated. Mar. 2, 1867, c. 170, s. 7, v. 14, p. 487.

Allowance for reduction of wages under eight-hour law:

Of such sum as may be required in the settlement of all accounts for the services of laborers, workmen, and mechanics employed by or on behalf of the Government, between the twenty-fifth day of June, eighteen hundred and sixty-eight, the date of the act constituting eight hours a day's work for all such laborers, workmen, and mechanics, and the nineteenth day of May, eighteen hundred and sixty-nine, the date of the proclamation of the President concerning such pay, to settle and pay for the same without reduction on account of reduction of hours of labor by said act, when it shall be made to appear that such was the sole cause of the reduction of wages. (*See sec. 3738.*) May 18, 1872, c. 172, s. 2, v. 17, p. 134.

181. All balances of appropriations contained in the annual appropriation bills and made specifically for the service of any fiscal year, and remaining unexpended at the expiration of such fiscal year, shall only be applied to the payment of expenses properly incurred during that year, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes shall be carried to the surplus fund. This section, however, shall not apply to appropriations known as permanent or indefinite appropriations.<sup>1</sup> Application of balances of appropriations. July 12, 1870, c. 251, s. 5, v. 16, p. 251. Sec. 3690, R. S.

<sup>1</sup>The use of every fiscal-year appropriation is limited by section 3690 of the Revised Statutes and by its own terms to the payment of expenses properly incurred during the fiscal year for which it is made, or to the fulfillment of contracts properly made within that year; and balances not needed for such purposes must be carried to the surplus fund and covered into the Treasury in conformity with the provisions of section 5 of the act of June 20, 1874. (18 Stat. L. 110; 3 Dig. Compt. Dec., 31.) The use of any part of an appropriation made for one fiscal year for the payment of any liability incurred during a succeeding fiscal year is prohibited by section 3679 as well as by section 3690 of the Revised Statutes. (3 *Ibid.*, 31.)

Disposal of balances after two years.

Sec. 6, *ibid.*  
June 20, 1874, c. 328, v. 18, p. 110.

Sec. 3691, R. S.

**182.** All balances of appropriations which shall have remained on the books of the Treasury, without being drawn against in the settlement of accounts, for two years from the date of the last appropriation made by law, shall be reported by the Secretary of the Treasury to the Auditor of the Treasury, whose duty it is to settle accounts thereunder, and the Auditor shall examine the books of his office, and certify to the Secretary whether such balances will be required in the settlement of any accounts pending in his office; and if it appears that such balances will not be required for this purpose, then the Secretary may include such balances in his surplus-fund warrant, whether the head of the proper Department shall have certified that it may be carried into the general Treasury or not. But no appropriation for the payment of the interest or principal of the public debt, or to which a longer duration is given by law, shall be thus treated.

Proceeds of certain sales, etc., of material.

Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; July 28, 1866, c. 299, s. 25, v. 14, p. 336; May 8, 1872, c. 140, s. 5, v. 17, p. 83; June 8, 1872, c. 348, v. 17, p. 337; Mar. 3, 1875, c. 130, v. 18, p. 388; Mar. 3, 1875, c. 131, v. 18, p. 410; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3692, R. S.

**183.** All moneys received from the leasing or sale of marine hospitals, or the sale of revenue-cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, [or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army,] or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.

#### DEBTS DUE BY OR TO THE UNITED STATES. CLAIMS.

Par.

184. Priority of debts due the United States established.

185. Liability of executors, etc.

186. Priority of sureties.

187. Notice of principal's deficiency to be immediately communicated to sureties.

188. Sureties released after five years without suit.

189. Compromise of claims.

190. Purchase on execution.

191. Discharge of poor debtor by Secretary of the Treasury.

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193. What coin receivable in payment of dues to the United States.

194. National-bank notes, when receivable.

Par.

195. Treasury notes payable for debts of the United States.

196. Assignment of claims void.

197. Amount of debt due United States to be withheld by Secretary of the Treasury in paying judgments, etc., of debtor against the United States; balance how paid to claimant; interest.

198. Oath by persons prosecuting claims.

199. Who may administer oath.

200. Claims of disloyalists.

201. Claims for collecting, drilling, etc., volunteers to be presented before June 30, 1874.

Par.	Par.
202. Penalty for making false claims against the United States.	212. Payment to owner for horse lost in military service.
203. Suits for recovery of same.	213. Auditor may take testimony as to steamboats, cars, etc.
204. Duty of district attorney as to such cases.	214. Section 1, act of Mar. 3, 1849, construed. Claims to be presented prior to January 1, 1876.
205. Rights of persons bringing such suits.	215. Accounting officers to settle claims of officers and men in military service for property lost or destroyed: (1) When loss was without fault or negligence; (2) when shipped by order on an unseaworthy vessel; (3) when lost in saving property of the United States. Limitation.
206. Limitation of suit.	
207. Payments to officers for horses lost in battle.	
208. Payment for property lost in military service.	
209. Payment for horses lost by capture.	
210. Payment for condemned horses and equipage.	
211. Payment to guardian for horse lost by minor.	

## PRIORITY OF DEBTS DUE THE UNITED STATES.

**184.** Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed.<sup>1</sup>

**185.** Every executor, administrator, or assignee, or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid. (*See sec. 5101, R. S.*)

**186.** Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, ad-

Priority of debts due the United States established.

Mar. 3, 1797, c. 20, s. 5, v. 1, p. 515; Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676.

Sec. 3466, R. S.

Liability of executors, etc.

Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676.

Field v. U. S., 9 Pet., 182; Brent v. Bank of Washington, 10 Pet., 596.

Sec. 3467, R. S.

Priority of sureties.

Mar. 2, 1799, c. 22, s. 65, v. 1, p. 676.

Sec. 3468, R. S.

<sup>1</sup>U. S. v. Fisher, 2 Cr., 358; U. S. v. Hooe, 3 Cr., 73; Harrison v. Slerry, 5 Cr., 289; Prince v. Bartlett, 8 Cr., 431; U. S. v. Bryan, 9 Cr., 374; Thelsson v. Smith, 2 Wh., 396; U. S. v. Howland, 4 Wh., 108; Conad v. Insurance Company, 1 Pet., 386; Hunter v. U. S., 5 Pet., 173; U. S. v. State Bank, 6 Pet., 29; U. S. v. Haack, 8 Pet., 271; Brent v. Bank of Washington, 10 Pet., 596; Beaton v. Farmers' Bank, 12 Pet., 102; U. S. v. Herron, 20 Wall., 251; Bayne et al., Trustees, v. U. S., 93 U. S., 642.

ministrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon.<sup>1</sup>

#### SURETIES—LIABILITY AND RELEASE.

Notice of principal's deficiency to be immediately communicated to sureties.

Act Aug. 8, 1888, v. 25, p. 787.

**187.** Hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond. *Act of August 8, 1888 (25 Stat. L., 387).*

Sureties released after five years without suit.

Sec. 2, *ibid.*

**188.** That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness. *Sec. 2, ibid.*

#### COMPROMISE OF CLAIMS AND PURCHASE ON EXECUTION.

Compromise of claims.

Mar. 3, 1863, c. 76, s. 10, v. 12, p. 740.

U. S. v. George, 6 Blatch., 406.

Sec. 3469, R. S.

**189.** Upon a report by a district attorney, or any special attorney or agent having charge of any claim in favor of the United States, showing in detail the condition of such claim, and the terms upon which the same may be compromised, and recommending that it be compromised upon

<sup>1</sup>The priority given in this section to sureties does not apply to sureties on a recognition in a criminal case. *U. S. v. Rydor*, 110 U. S., 729; *U. S. v. Fisher*, 2 Cr., 358; *U. S. v. Hooe*, 3 Cr., 73; *Prince v. Bartlett*, 8 Cr., 431; *U. S. v. Bryan*, 9 Cr., 374; *Thelsson v. Smith*, 2 Wh., 396; *U. S. v. Howland*, 4 Wh., 108; *Conard v. Insurance Company*, 1 Pet., 439; *Hunter v. U. S.*, 5 Pet., 173; *Child v. Shoemaker*, 1 Wash., 494; *U. S. v. King*, Wall. C. C., 12; *Johns v. Brodhag*, 1 Cr. C. C., 235.

the terms so offered, and upon the recommendation of the Solicitor of the Treasury, the Secretary of the Treasury is authorized to compromise such claim accordingly. But the provisions of this section shall not apply to any claim arising under the postal laws.

190. At every sale, on execution, at the suit of the United States, of lands or tenements of a debtor, the United States may, by such agent as the Solicitor of the Treasury shall appoint, become the purchaser thereof; but in no case shall the agent bid in behalf of the United States a greater amount than that of the judgment for which such estate may be exposed to sale, and the costs. Whenever such purchase is made, the marshal of the district in which the sale is held shall make all needful conveyances, assignments, or transfers to the United States.

Purchase on execution.

May 26, 1824, c. 172, s. 2, v. 4, p. 51.

Sec. 3470, R. S.

#### DISCHARGE OF POOR DEBTORS.

191. Any person imprisoned upon execution issuing from any court of the United States, for a debt due to the United States, which he is unable to pay, may, at any time after commitment, make application in writing, to the Secretary of the Treasury, stating the circumstances of his case, and his inability to discharge the debt; and thereupon the Secretary may make, or require to be made, an examination and inquiry into the circumstances of the debtor, by the oath of the debtor, which the Secretary, or any other person by him specially appointed, is authorized to administer, or otherwise, as the Secretary shall deem necessary and expedient, to ascertain the truth; and upon proof made to his satisfaction, that the debtor is unable to pay the debt for which he is imprisoned, and that he has not concealed or made any conveyance of his estate, in trust, for himself, or with an intent to defraud the United States, or to deprive them of their legal priority, the Secretary is authorized to receive from such debtor any deed, assignment, or conveyance of his real or personal estate, or any collateral security, to the use of the United States. Upon a compliance by the debtor with such terms and conditions as the Secretary may judge reasonable and proper, the Secretary must issue his order, under his hand, to the keeper of the prison, directing him to discharge the debtor from his imprisonment under such execution. The debtor shall not be liable to be imprisoned again for the debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor. The benefit of this section

Discharge of poor debtor by Secretary of the Treasury.

June 6, 1798, c. 49, ss. 1, 3, v. 1, pp. 561, 562.

Sec. 3471, R. S.



shall not be extended to any person imprisoned for any fine, forfeiture, or penalty, incurred by a breach of any law of the United States, or for moneys had and received by any officer, agent, or other person, for their use; nor shall its provisions extend to any claim arising under the postal laws.<sup>1</sup>

Discharge by the President.

Mar. 3, 1817, c. 114, v. 3, p. 399.

Sec. 3472, R. S.

**192.** Whenever any person is imprisoned upon execution for a debt due to the United States, which he is unable to pay, and his case is such as does not authorize his discharge by the Secretary of the Treasury, under the preceding section, he may make application to the President, who, upon proof made to his satisfaction that the debtor is unable to pay the debt, and upon a compliance by the debtor with such terms and conditions as the President shall deem proper, may order the discharge of such debtor from his imprisonment. The debtor shall not be liable to be imprisoned again for the same debt; but the judgment shall remain in force, and may be satisfied out of any estate which may then, or at any time afterward, belong to the debtor.<sup>2</sup>

#### TENDER.

What coin receivable in payment of dues to the United States.

Aug. 31, 1852, c. 108, s. 2, v. 10, pp. 97, 98; Feb. 21, 1857, c. 56, ss. 2, 3, v. 11, p. 163.

Sec. 3474, R. S.

National bank notes, when receivable.

June 3 1864, c. 106, s. 23, v. 13, p. 106.

Sec. 3475, R. S.

Treasury notes payable for debts of United States.

Mar. 3, 1863, c. 73, s. 2, v. 12, p. 710; June 30, 1864, c. 172, s. 2, v. 13, p. 218.

Sec. 3476, R. S.

**193.** No gold or silver other than coin of standard fineness of the United States, shall be receivable in payment of dues to the United States, except as provided in section twenty-three hundred and sixty-six, Title "PUBLIC LANDS," and in section thirty-five hundred and sixty-seven, Title "COINAGE, WEIGHTS, AND MEASURES."<sup>3</sup>

**194.** The notes of national banks shall be received at par for all debts and demands owing by the United States to any person within the United States, except interest on the public debt, or in redemption of the national currency.

**195.** Treasury notes bearing interest may be paid to any creditor of the United States at their face value, excluding interest, or to any creditor willing to receive them at par, including interest.

#### ASSIGNMENTS OF CLAIMS, POWERS OF ATTORNEY.

Assignments of claims void, unless, etc.

Feb. 26, 1853, c. 81, s. 1, v. 10, p. 170; July 29, 1846, c. 66, v. 9, p. 41.

Sec. 3477, R. S.

**196.** All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving pay-

<sup>1</sup> The discharge of a debtor in accordance with the provisions of this section does not operate to discharge his sureties from liability. (1 Paine, 525.) See also *U. S. v. Stansbury*, 1 Pet., 573; *U. S. v. Ringgold*, 5 Pet., 150; *Hunter v. U. S.*, 5 Pet., 173; *U. S. v. Sturges*, 1 Paine, 525.

<sup>2</sup> See *U. S. v. Ringgold*, 8 Pet., 150.

<sup>3</sup> See sections 2366 and 3567 of the Revised Statutes.

ment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.<sup>1</sup>

SET-OFF.

197. When any final judgment recovered against the United States or other claim duly allowed by legal authority, shall be presented to the Secretary of the Treasury for payment, and the plaintiff or claimant therein shall be indebted to the United States in any manner, whether as principal or surety, it shall be the duty of the Secretary to withhold payment of an amount of such judgment or claim equal to the debt thus due to the United States; and if such plaintiff or claimant assents to such set-off, and discharges his judgment or an amount thereof equal to said debt or claim, the Secretary shall execute a discharge of the debt due from the plaintiff to the United States. But if such plaintiff, or claimant, denies his indebtedness to the United States, or refuses to consent to the set-off, then the Secretary shall withhold payment of such further amount of such judgment, or claim, as in his opinion will be sufficient to cover all legal charges and costs in prosecuting the debt of the United States to final judgment. And if such debt is not already in suit, it shall be the duty of the Secretary to cause legal proceedings to be immediately

Amount of debt due United States to be withheld by Secretary of Treasury in paying judgments, etc., of debtor against United States. Act Mar. 3, 1875, v. 18, p. 481.

<sup>1</sup>The accounting officers of the Treasury will not approve powers of attorney to demand and receive moneys due upon claims against the United States when such powers are not executed in accordance with the provisions of section 3477 of the Revised Statutes. (1 Compt. Dec., 142.) Section 3477 of the Revised Statutes, making null and void all assignments and powers of attorney to collect any claim or demand against the Government (unless the power of attorney is given after the settlement of the claim and the issuance of the warrant in payment) applies to liquidated, certain, and undisputed demands as well as to those which are unliquidated, uncertain, or disputed. (Ibid., 276.) Under the decisions of the courts the accounting officers are required, notwithstanding the provisions of section 3477 of the Revised Statutes, to credit disbursing officers with payments actually made by them under powers of attorney, provided it is shown that, at the time of such payment, such powers are undisputed and have not been revoked, either by the voluntary action of the principal or by his death. (Ibid., 142, 431.)

The assignment of a quartermaster's voucher, unless made "after the allowance of such a claim" and in conformity with all the other requirements of section 3477 of the Revised Statutes, is "absolutely null and void." The exigencies of the war and of the Government service immediately after the war, which at one time were relied upon to support the practice of paying the assignees of such vouchers, can not be made available in deciding cases now arising. (3 Dig., Compt. Dec., 45.)

commenced to enforce the same, and to cause the same to be prosecuted to final judgment with all reasonable dispatch. And if in such action judgment shall be rendered against the United States, or the amount recovered for debt and costs shall be less than the amount so withheld as before provided, the balance shall then be paid over to such plaintiff by such Secretary with six per cent interest, thereon for the time it has been withheld from the plaintiff.

*Act of March 3, 1875 (18 Stat L., 481).*

Balance, how paid to claimant.

Interest.

#### PROSECUTION OF CLAIMS.

**198.** Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service. (*See secs. 1756, 1757 R. S.*)

Oath by persons prosecuting claims.  
July 17, 1862, c. 205, s. 1, v. 12, p. 610.

Sec. 3478, R.S.

**199.** The oath provided for in the preceding section may be taken before any justice of the peace, notary public, or other person who is legally authorized to administer an oath in the State or district where the same may be administered.

Who may administer the oath.  
July 17, 1862, c. 205, s. 2, v. 12, p. 610.

Sec. 3479, R.S.

**200.** It shall be unlawful for any officer to pay any account, claim, or demand against the United States which accrued or existed prior to the thirteenth day of April, eighteen

Claims of disloyalists.  
Mar. 2, 1867, Res. 46, v. 14, p. 571.

Sec. 3480, R.S.

hundred and sixty-one, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor of any person who during such rebellion was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this section is modified or repealed. But this section shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned prior to the first day of April, eighteen hundred and sixty-one, to the creditors of such contractors, loyal citizens of loyal States, in payment of debts incurred prior to the first day of March, eighteen hundred and sixty-one.<sup>1</sup>

**201.** No claims against the United States, for collecting, drilling, or organizing volunteers for the war of the rebellion, shall be audited or paid unless presented before

Claims for collecting, etc., volunteers to be presented prior to June 30, 1874.

<sup>1</sup> By the act of March 3, 1877, chapter 105, volume 19, page 362, provision was made for the payment of the amounts due to mail contractors for mail service performed in the States recently in rebellion, and before said States respectively engaged in war against the United States; and the provisions of this section of the Revised Statutes were declared to be not applicable to the payments therein authorized.

the thirtieth day of June, eighteen hundred and seventy-four. No claims for horses lost prior to the first day of January, eighteen hundred and seventy-two, shall be audited or paid unless presented before the thirtieth day of June, eighteen hundred and seventy-four.

Mar. 3, 1873, c. 226, s. 1, v. 17, p. 500.

Sec. 3489, R. S.

202. Any person not in the military or naval forces of the United States, or in the militia called into or actually employed in the service of the United States, who shall do or commit any of the acts prohibited by any of the provisions of section fifty-four hundred and thirty-eight, Title "CRIMES," shall forfeit and pay to the United States the sum of two thousand dollars, and, in addition, double the amount of damages which the United States may have sustained by reason of the doing or committing such act, together with the costs of suit; and such forfeiture and damages shall be sued for in the same suit.

Penalty for making false claims against United States.

Mar. 2, 1863, c. 67, s. 3, v. 12, p. 698.

Sec. 3490, R. S.

203. The several district courts of the United States, the supreme court of the District of Columbia, the several district courts of the Territories of the United States, within whose jurisdictional limits the person doing or committing such act shall be found, shall, wheresoever such act may have been done or committed, have full power and jurisdiction to hear, try, and determine such suit. Such suit may be brought and carried on by any person, as well for himself as for the United States; the same shall be at the sole cost and charge of such person, and shall be in the name of the United States, but shall not be withdrawn or discontinued without the consent, in writing, of the judge of the court and the district attorney, first filed in the case, setting forth their reasons for such consent.

Suits for recovery of same.

Mar. 2, 1863, c. 67, s. 4, v. 12, p. 698.

Sec. 3491, R. S.

204. It shall be the duty of the several district attorneys of the United States for the respective districts, for the District of Columbia, and for the several Territories, to be diligent in inquiring into any violation of the provisions of section thirty-four hundred and ninety by persons liable to such suit, and found within their respective districts or Territories, and to cause them to be proceeded against in due form of law for the recovery of such forfeiture and damages. And such person may be arrested and held to bail in such sum as the district judge may order, not exceeding the sum of two thousand dollars, and twice the amount of the damages sworn to in the affidavit of the person bringing the suit.

Duty of district attorney as to such cases.

Mar. 2, 1863, c. 67, s. 5, v. 12, p. 698.

Sec. 3492, R. S.

205. The person bringing said suit and prosecuting it to final judgment shall be entitled to receive one-half the

Rights of persons bringing such suits.

Mar. 2, 1863, c. 67, s. 6, v. 12, p. 698.

amount of such forfeiture, as well as one-half the amount of the damages he shall recover and collect; and the other half thereof shall belong to and be paid over to the United States; and such person shall be entitled to receive to his own use all costs the court may award against the defendant, to be allowed and taxed according to any provision of law or rule of court in force, or that shall be in force in suits between private parties in said court: *Provided*, That such person shall be liable for all costs incurred by himself in the case, and shall have no claim therefor on the United States.

Limitation of suit.

Sec. 7, *ibid*.

**206.** Every such suit shall be commenced within six years from the commission of the act, and not afterward.

Sec. 3494, R. S.

#### PAYMENT FOR HORSES LOST IN SERVICE.

Payment to officers for horses lost in battle, etc.

Mar. 3, 1849, c. 129, s. 1, v. 9, p. 414; June 22, 1874, c. 395, v. 18, p. 193.

Sec. 3482, R. S.

**207.** Any field, or staff, or other officer, mounted militia-man, volunteer, ranger, or cavalryman, engaged in the military service of the United States, who sustains damage without any fault or negligence on his part, while in the service, by the loss of a horse in battle, or by the loss of a horse wounded in battle, which dies of the wound, or which, being so wounded, is abandoned by order of his officer and lost, or who sustains damage by the loss of any horse by death or abandonment because of the unavoidable dangers of the sea, when on board a United States transport vessel, or because the United States fails to supply transportation for the horse, and the owner is compelled by the order of his commanding officer to embark and leave him, or in consequence of the United States failing to supply sufficient forage, or because the rider is dismounted and separated from his horse and ordered to do duty on foot at a station detached from his horse, or when the officer in the immediate command orders the horse turned out to graze in the woods, prairies, or commons, because the United States fails to supply sufficient forage, and the loss is consequent thereon, or for the loss of necessary equipage, in consequence of the loss of his horse, shall be allowed and paid the value thereof not to exceed two hundred dollars. But any payment which is made to any one for the use and risk, or for forage, after the death, loss, or abandonment of his horse, shall be deducted from the value thereof, unless he satisfies the paymaster at the time he makes the payment, or thereafter shows, by proof, that he was remounted, in which case the deduction shall only extend to the time he was on foot. And any payment made to any person above mentioned, on account of clothing, to which he is not entitled

by law, shall be deducted from the value of his horse or accouterments.<sup>1</sup> (*See sec. 277, R. S.*)

**208.** Every person who sustains damage by the capture or destruction by an enemy, or by the abandonment or destruction by the order of the commanding general, the commanding officer, or quartermaster, of any horse, mule, ox, wagon, cart, sleigh, harness, steamboat or other vessel, railroad-engine or railroad-car, while such property is in the military service, either by impressment or contract,<sup>2</sup> or who sustains damage by the death or abandonment and loss of any horse, mule, or ox, while in the service, in consequence of the failure on the part of the United States to furnish the same with sufficient forage, or whose horse, mule, ox, wagon, cart, boat, sleigh, harness, vessel, railroad-engine, or railroad-car is lost or destroyed by unavoidable accident while such property is in the service, shall be allowed and paid the value thereof at the time when such property was taken into the service, except in cases where the risk to which the property would be exposed was agreed to be incurred by the owner: *Provided*, It appears that such loss, capture, abandonment, destruction, or death was without any fault or negligence on the part of the owner of the property, and while the property was actually employed in the service of the United States.

Payment for property lost in military service.

Mar. 3, 1849, c. 129, s. 2, v. 9, p. 415;  
Mar. 3, 1863, c. 78, s. 5, v. 12, p. 743.  
*Stuart v. U. S.*, 18 Wall., 84.

Sec. 3483, R. S.

**209.** The two preceding sections shall extend to all cases of the loss of horses by any officer, non-commissioned officer, or private in the military service of the United States, while in the line of his duty in such service, by capture by the enemy, whenever it shall appear that such officer, non-commissioned officer, or private was ordered by his superior officer to surrender to the enemy, and such capture was made in pursuance of such surrender.

Payment for horses lost by capture.

June 25, 1864, c. 150, v. 13, p. 182.

Sec. 3484, R. S.

**210.** Whenever any horse is condemned by a board of officers, on account of his unfitness for service, in consequence of the Government failing to supply forage, such horse and his equipage shall be allowed and paid for: *Provided*, It shall be proven, by satisfactory evidence, whether oral or written, that the condemned horse and the equipage were turned over to a quartermaster of the Army, whether any receipt therefor was given and produced, or not.

Payment for condemned horses and equipage.

Mar. 3, 1849, c. 129, s. 7, v. 9, p. 416.

Sec. 3485, R. S.

<sup>1</sup>To authorize a judgment under this section, it is necessary to prove (1) that the claimant owned a horse which he took into the military service; (2) that the horse was lost; (3) that the loss resulted from an exigency or necessity of the military service; and (4) that the loss was without fault or negligence on the part of the claimant. *Irby v. U. S.*, 18 C. Cls. S. R., 259; *Shaw's Case*, 8 C. Cls. R., 488.

<sup>2</sup>The transportation from post to post of military stores remote from the seat of actual war, not forming a portion of an advancing or retreating army, gives to the contractor merely the character of a carrier. He is not in the military service of the United States within the meaning of the act of March 3, 1849. *Guttman v. U. S.*, 9 Ct. Cls., 60; *Stuart v. U. S.*, 18 Wall., 84.

Payment to  
guardian for  
horse lost by  
minor.

Mar. 3, 1849, c.  
129, s. 5, v. 9, p. 415.

Sec. 3486, R. S.

211. When any minor engaged in the military service of the United States, and provided with a horse or equipments, or with military accouterments, by his parent or guardian, dies, without paying for the property, and the same is lost, captured, destroyed, or abandoned in the manner before mentioned, such parent or guardian shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto by having furnished the same.

Payment to  
owner for horse  
lost in military  
service.

Mar. 3, 1849, c.  
129, s. 6, v. 9, p. 416.

Sec. 3487, R. S.

212. When any person other than a minor, engaged in the military service, is provided with a horse or equipments, or with military accouterments, by any person, being the owner thereof, who takes the risk of such horse, equipments, or military accouterments, on himself, and the same is lost, captured, destroyed, or abandoned, in the manner before mentioned, such owner shall be allowed pay therefor, on making satisfactory proof, as in other cases, and the further proof that he is entitled thereto, by having furnished the same, and having taken the risk on himself.

Auditor may  
take testimony as  
to steamboats,  
cars, etc.

June 25, 1864, c.  
147, s. 6, v. 13, p.  
160.

Sec. 3488, R. S.

213. In executing so much of the preceding sections as provides for payment for steamboats and other vessels, and railroad engines or cars, lost or destroyed while in the military service of the United States, the Third Auditor of the Treasury is authorized, in person, or in such manner as he may deem most compatible with the public interests, to take testimony, and make such investigations as he may deem necessary in adjudicating claims; and for such necessary expenses incurred therein, payment may be made upon proper vouchers, certified and approved by the Third Auditor.

Sec. 1, act of  
Mar. 3, 1849, con-  
strued.

Sec. 1, June 22,  
1874, v. 18, p. 193.

214. The first section of the act of March third, eighteen hundred and forty-nine,<sup>1</sup> providing for the payment for horses and equipments lost by officers or enlisted men in the military service shall not be construed to deny payment to such officers or enlisted men, for horses which may have been purchased by them in States in insurrection; and payment in any case shall not be refused where the loss resulted from any exigency or necessity of the military service, unless it was caused by the fault or negligence of such officers or enlisted men. That no claims under said section or this amendment thereto shall be considered unless presented prior to the first day of January, eighteen hundred and seventy-six. *Act of June 22, 1874 (18 Stat. L., 193).*

Claims to be  
presented prior  
to Jan. 1, 1876.  
Sec. 2, *ibid.*

<sup>1</sup> Section 3482, Revised Statutes, par. 207, *supra*.

215. That the proper accounting officers of the Treasury be, and they are hereby, authorized and directed to examine into, ascertain, and determine the value of the private property belonging to officers and enlisted men in the military service of the United States which has been, or may hereafter be, lost or destroyed in the military service, under the following circumstances:

First. When such loss or destruction was without fault or negligence on the part of the claimant.

Second. Where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment.

Third. Where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances. And the amount of such loss so ascertained and determined shall be paid out of any money in the Treasury not otherwise appropriated, and shall be in full for all such loss or damage: *Provided*, That any claim which shall be presented and acted on under authority of this act shall be held as finally determined, and shall never thereafter be reopened or considered: *And provided further*, That this act shall not apply to losses sustained in time of war or hostilities with Indians: *And provided further*, That the liability of the Government under this act shall be limited to such articles of personal property as the Secretary of War, in his discretion shall decide to be reasonable, useful, necessary, and proper for such officer or soldier while in quarters, engaged in the public service, in the line of duty: *And provided further*, That all claims now existing shall be presented within two years and not after from the passage of this act; and all such claims hereafter arising be presented within two years from the occurrence of the loss or destruction.<sup>1</sup>

*Act of March 3, 1885 (23 Stat. L., 350).*

Accounting officers to settle claims of officers and men in military service for property lost or destroyed.

When loss or destruction was without fault or negligence.

When shipped by order on unseaworthy vessel.

When lost in saving property of United States.

Mar. 3, 1885, v 23, p. 350.

Claims to be presented in two years.

<sup>1</sup> For private property of officers or enlisted men lost or destroyed in the military service, without fault or negligence on the part of the claimant, "where the private property so lost or destroyed was shipped on board an unseaworthy vessel by order of any officer authorized to give such order or direct such shipment," or "where it appears that the loss or destruction of the private property of the claimant was in consequence of his having given his attention to the saving of the property belonging to the United States which was in danger at the same time and under similar circumstances," compensation may be made under the provisions of the act of Congress approved March 3, 1885. Proceedings of a board of survey will, if possible, accompany each application under this act, showing fully the circumstances attending the loss. (Par. 723, A. R., 1895.) See, also, 2 Compt. Dec. 644.



## THE TREASURER.

Par.	Par.
216. The Treasurer.	224. Public moneys subject to draft of the Treasurer.
217. Duties of the Treasurer.	225. Superintendents of mint at Carson City and assay office at Boisé City to be assistant treasurers.
218. Liabilities outstanding three or more years to be deposited in the Treasury.	226. Appointment of assistant treasurers.
219. Payment of outstanding drafts.	227. Bonds of special agents.
220. Accounts of disbursing officers unchanged for three years.	228. Collectors of public moneys to deposit same in Treasury.
221. Reports of Treasurer, assistant treasurers, etc., and disbursing officers.	229. How marshals, district attorneys, and other officers may deposit money in Treasury.
222. The Treasury of the United States.	
223. Certain mints and assay offices to be depositories.	

The Treasurer. Sept. 2, 1789, c. 12, s. 1, v. 1, p. 65; July 23, 1866, c. 208, s. 2, v. 14, p. 206; July 17, 1884, v. 23, p. 169. **216.** There shall be in the Department of the Treasury a Treasurer of the United States, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of six thousand dollars a year.

Duties of the Treasurer. Sept. 2, 1789, c. 12, s. 4, v. 1, p. 65. **217.** The Treasurer shall receive and keep the moneys of the United States, and disburse the same upon warrants drawn by the Secretary of the Treasury, countersigned by the Comptroller, and not otherwise. He shall take receipts for all moneys paid by him, and shall give receipts for all

Sec. 11, act of July 31, 1894, vol. 28, p. 210. **218.** At the termination of each fiscal year all amounts of moneys that are represented by certificates, drafts, or checks, issued by the Treasurer, or by any disbursing officer of any Department of the Government, upon the Treasurer or any assistant treasurer, or designated depository of the United States, or upon any national bank designated as a depository of the United States, and which

Liabilities outstanding three or more years to be deposited in the Treasury. May 2, 1866, c. 70, ss. 1, 4, v. 14, pp. 41, 42. **219.** Payment of outstanding drafts.

Sec. 306, R. S.

<sup>1</sup> So much of this section as required the Register of the Treasury to record warrants was repealed by section 11, of the act of July 31, 1894. (28 Stat. L., 209.)

shall be represented on the books of either of such offices as standing to the credit of any disbursing officer, and which were issued to facilitate the payment of warrants, or for any other purpose in liquidation of a debt due from the United States, and which have for three years or more remained outstanding, unsatisfied, and unpaid, shall be deposited by the Treasurer, to be covered into the Treasury by warrant, and to be carried to the credit of the parties in whose favor such certificates, drafts, or checks were respectively issued, or to the persons who are entitled to receive pay therefor, and into an appropriation account to be denominated "outstanding liabilities."

219. The payee or the bona-fide holder of any draft or check the amount of which has been deposited and covered into the Treasury pursuant to the preceding sections, shall, on presenting the same to the proper officer of the Treasury, be entitled to have it paid by the settlement of an account and the issuing of a warrant in his favor, according to the practice in other cases of authorized and liquidated claims against the United States. *Sec. 308, R. S.*

Payment of  
outstanding  
drafts.  
May 2, 1866, c.  
70, s. 3, v. 14, p. 42.

Sec. 308, R. S.

220. The amounts, except such as are provided for in section three hundred and six, of the accounts of every kind of disbursing officer, which shall have remained unchanged, or which shall not have been increased by any new deposit thereto, nor decreased by drafts drawn thereon, for the space of three years, shall in like manner be covered into the Treasury, to the proper appropriation to which they belong; and the amounts thereof shall, on the certificate of the Treasurer that such amount has been deposited in the Treasury, be credited by the proper accounting officer of the Department of the Treasury on the books of the Department, to the officer in whose name it had stood on the books of any agency of the Treasury, if it appears that he is entitled to such credit.

Accounts of  
disbursing officers  
unchanged  
for three years.  
May 2, 1866, c.  
70, s. 5, v. 14, p. 42.

Sec. 309, R. S.

221. The Treasurer, each assistant treasurer, and each designated depository of the United States, and the cashier of each of the national banks designated as such depositories, shall, at the close of business on every thirtieth day of June, report to the Secretary of the Treasury the condition of every account standing, as in the preceding section specified, on the books of their respective offices, stating the name of each depositor, with his official designation, the total amount remaining on deposit to his credit, and the dates, respectively, of the last credit and the last debit made to each account. And each disbursing officer shall make a like return of all checks issued by him, and which may then have been outstanding and

Reports of  
Treasurer, assistant  
treasurers,  
etc., and disbursing  
officers.

May 2, 1866, c.  
70, s. 6, v. 14, p. 42.

Sec. 310, R. S.

unpaid for three years and more, stating fully in such report the name of the payee, for what purpose each check was given, the office on which drawn, the number of the voucher received therefor, the date, number, and amount for which it was drawn, and, when known, the residence of the payee.

#### THE PUBLIC MONEYS.

##### THE TREASURY, SUB-TREASURIES AND DEPOSITORIES.

The Treasury of the United States.

Aug. 6, 1846, c. 90, s. 1, v. 9, p. 59.

Cooke et al. v. U. S., 91 U. S., 389.

Sec. 3591, R. S.

**222.** The rooms provided in the Treasury building at the seat of Government for the use of the Treasurer of the United States, his assistants, and clerks, and occupied by them, and the fire-proof vaults and safes erected therein for the keeping of the public moneys in the possession and under the immediate control of the Treasurer, and such other apartments as are provided as places of deposit of the public money, shall be the Treasury of the United States.

Certain mints and assay offices to be depositories.

Apr. 21, 1862, c. 59, s. 5, v. 12, p. 333; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271; Feb. 12, 1873, c. 131, ss. 65, 66, v. 17, p. 435. Sec. 3592, R. S.

Public moneys subject to draft of the Treasurer.

Aug. 6, 1846, c. 90, s. 1, v. 9, p. 59.

Sec. 3593, R. S.

Superintendents of mint at Carson and assay office at Boisé City to be assistant treasurers.

Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; Apr. 21, 1862, c. 50, s. 5, v. 12, p. 383; Mar. 3, 1871, c. 113, s. 1, v. 16, p. 485; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271; Feb. 12, 1873, c. 131, ss. 65, 66, v. 17, p. 435. Sec. 3594, R. S.

Appointment, etc., of assistant treasurers.

Aug. 6, 1846, c. 90, s. 5, v. 9, p. 60; Apr. 7, 1868, c. 28, s. 14, v. 14, p. 26; June 15, 1870, c. 12, s. 1, v. 16, p. 152; Feb. 12, 1873, c. 131, s. 65, v. 17, p. 435; Mar. 3, 1873, c. 229, s. 5, v. 17, p. 543.

Sec. 3595, R. S.

**223.** The mints at Carson City, and at Denver, and the assay-office at Boisé City, shall be places of deposit for such public moneys as the Secretary of the Treasury may direct.

**224.** All public moneys paid into any depository shall be subject to the draft of the Treasurer of the United States, drawn agreeably to appropriations made by law.

**225.** The superintendent of the mint at Carson City, and the superintendent of the assay-office at Boisé City, shall be assistant treasurers of the United States, and shall respectively have the custody and care of all public moneys deposited therein, and shall perform all the duties required of them in reference to the receipt, safe-keeping, transfer, and disbursement of all such moneys, as provided by law.

**226.** There shall be assistant treasurers of the United States, appointed from time to time by the President, by and with the advice and consent of the Senate, to serve for the term of four years, as follows:

One at Boston.

One at New York.

One at Philadelphia.

One at Baltimore.

One at New Orleans.

One at Saint Louis.

One at San Francisco.

One at Cincinnati.

One at Chicago.

## BONDS OF SPECIAL AGENTS.

227. Whenever it becomes necessary for the head of any Department or office to employ special agents, other than officers of the Army or Navy, who may be charged with the disbursement of public moneys, such agents shall, before entering upon duty, give bond in such form and with such security as the head of the Department or office employing them may approve. *Sec. 3614, R. S.*

Bonds of special agents.

Ang. 4, 1854, c. 242, s. 14, v. 10, p. 573.

Sec. 3614, R. S.

## DEPOSIT OF PUBLIC MONEY.

228. All collectors and receivers of public money of every description, within the District of Columbia, shall, as often as they may be directed by the Secretary of the Treasury or the Postmaster-General so to do, pay over to the Treasurer of the United States, at the Treasury, all public moneys collected by them or in their hands. All such collectors and receivers of public moneys within the cities of New York, Boston, Philadelphia, New Orleans, San Francisco, Baltimore, Charleston, and Saint Louis shall, upon the same direction, pay over to the assistant treasurers in their respective cities, at their offices, respectively, all the public moneys collected by them, or in their hands; to be safely kept by the respective depositaries, until otherwise disposed of according to law. It shall be the duty of the Secretary and Postmaster-General, respectively, to direct such payments by the collectors and receivers at all the said places, at least as often as once in each week, and as much oftener as they may think proper. (*See sec. 5490, R. S.*)

Collectors of public moneys to deposit same in Treasury, etc.

Ang. 6, 1846, c. 90, s. 9, v. 9, p. 61; Feb. 12, 1873, c. 131, s. 65, v. 17, p. 435.

Sec. 3615, R. S.

229. All marshals, district attorneys, and other persons than those mentioned in the preceding section, having public money to pay to the United States, may pay the same to any depositary constituted by or in pursuance of law, which may be designated by the Secretary of the Treasury. (*See secs. 5504, 5505, R. S.*)

How marshals, district attorneys, and other officers may deposit money in Treasury.

Ang. 6, 1846, c. 90, s. 15, v. 9, p. 62; July 8, 1870, c. 230, s. 111, v. 16, p. 216.

Sec. 3616, R. S.

## GENERAL DUTIES OF DISBURSING OFFICERS.

Par.

230. Duty of disbursing officers as to public money.

231. Penalty for failure to deposit.

232. Accounts to be rendered monthly.

233. Separate accounts required.

234. Suits to recover money from delinquent officers.

235. Distress warrants.

236. Contents of warrant.

Par.

237. Execution against officer.

238. Execution against surety.

239. Levy to be a lien.

240. Sale of lands.

241. Conveyance of lands.

242. Disposal of surplus.

243. Penalty for failure of disbursing officer to account.

244. Extent of application of distress warrants.

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245. Postponement of proceedings for nonaccounting, when allowed.	250. Transfers of moneys from depositaries to Treasury, etc.
246. Injunction to stay distress warrant.	251. Public moneys in Treasury and depositaries subject to draft of Treasurer.
247. Proceedings on distress warrant in circuit court.	252. Regulations for presentation of drafts.
248. Rights of United States reserved.	
249. Duties of disbursing officers as custodians of public moneys.	

Duty of disbursing officers as to public money.

June 14, 1866, c. 122, s. 1, v. 14, p. 64; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3620, R. S.

**230.** It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement to deposit the same with the Treasurer or some one of the assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law [and draw for the same only in favor of the persons to whom payment is made;] and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (*See sec. 5488, R. S.*)

Penalty for failure to deposit. Mar. 3, 1858, c. 114, s. 3, v. 11, p. 249.

Sec. 5, May 28, 1896, v. 29, p. 179.

Sec. 3621, R. S.

**231.** Every person who shall have moneys of the United States in his hands or possession, and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an Assistant Treasurer, or some public depository of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the Assistant Treasurer, or the public depository shall issue duplicate receipts for the moneys so paid, transmitting forthwith the original to the Secretary of the Treasury, and delivering the duplicate to the depositor: *Provided*, That postal revenue and debts due to the Post-Office Department shall be paid into the Treasury in the manner now required by law.

#### ACCOUNTS.<sup>1</sup>

Accounts to be rendered monthly.

**232.** Every officer or agent of the United States who receives public money which he is not authorized to retain

<sup>1</sup> For other statutory provisions in relation to accounts, see the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, and the title "*Disbursing Officers*" in the chapter entitled THE STAFF DEPARTMENTS.

as salary, pay, or emolument, shall render his accounts monthly. Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail or otherwise to the Bureau to which they pertain within ten days after the expiration of each successive month, and after examination there shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the nonreceipt at the Treasury or proper Bureau of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require. (*See sec. 5491, R. S.*)

**233.** All officers, agents, or other persons receiving public moneys, shall render distinct accounts of the application thereof according to the appropriation under which the same may have been advanced to them.

July 17, 1862, c. 199, s. 1, v. 12, p. 593; Mar. 2, 1867, Res. 48, v. 14, p. 571; July 15, 1870, c. 295, s. 15, v. 16, p. 334; Feb. 27, 1877, c. 69, v. 19, p. 249.  
Sec. 12, act July 31, 1894, v. 28, p. 209.

Sec. 3622, R. S.

Separate accounts required. Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.  
U. S. v. Gausson, 19 Wall., 198.

Sec. 3623, R. S.

#### SUITS TO RECOVER BALANCES DUE THE UNITED STATES.

**234.** Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States upon the adjustment of his account, the First Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum from the time of receiving the money until it shall be repaid into the Treasury.<sup>1</sup>

Suit to recover money from delinquent officers. Mar. 3, 1797, c. 20, s. 1, v. 1, p. 512.  
U. S. v. Gausson, 19 Wall., 198.

Sec. 3624, R. S.

#### DISTRESS WARRANTS.

**235.** Whenever any collector of the revenue, receiver of public money, or other officer, who has received the public money before it is paid into the Treasury of the United States, fails to render his account, or pay over the same in the manner or within the time required by law, it shall be the duty of the proper Auditor to cause to be stated the

Distress warrant. May 15, 1820, c. 197, s. 2, v. 3, p. 592; May 29, 1830, c. 153, s. 1, v. 4, p. 414; Feb. 27, 1877, s. 19, p. 249; July 31, 1894, v. 28, p. 206.

Sec. 3625, R. S.

<sup>1</sup>See, also, the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, paragraphs 134-165 *supra*.

account of such officer, exhibiting truly the amount due to the United States, and to certify the same to the Solicitor of the Treasury, who shall issue a warrant of distress against the delinquent officer and his sureties directed to the marshal of the district in which such officer and his sureties reside. Where the officer and his sureties reside in different districts, or where they or either of them reside in a district other than that in which the estate of either may be, which it is intended to take and sell, then such warrant shall be directed to the marshals of such districts, respectively.<sup>1</sup>

Contents of  
warrant.

Sec. 3626, R. S.

Execution  
against officer.

May 15, 1820, c.  
107, s. 2, v. 3, p.  
593.

Sec. 3627, R. S.

**236.** The warrant of distress shall specify the amount with which such delinquent is chargeable and the sums, if any, which have been paid.

**237.** The marshal authorized to execute any warrant of distress shall, by himself or by his deputy, proceed to levy and collect the sum remaining due, by distress and sale of the goods and chattels of such delinquent officer, having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town and county where the goods or chattels were taken, or in the town or county where the owner of such goods or chattels may reside. If the goods and chattels be not sufficient to satisfy the warrant, the same may be levied upon the person of such officer, who may be committed to prison, there to remain until discharged by due course of law.

Execution  
against surety.

May 15, 1820, c.  
107, s. 2, v. 3, p.  
593.

Sec. 3628, R. S.

**238.** If the delinquent officer absconds, or if goods and chattels belonging to him can not be found sufficient to satisfy the warrant, the marshal or his deputy shall proceed, notwithstanding the commitment of the delinquent officer, to levy and collect the sum which remains due by such delinquent, by the distress and sale of the goods and chattels of his sureties; having given ten days' previous notice of such intended sale, by affixing an advertisement of the articles to be sold at two or more public places in the town or county where the goods or chattels were taken, or in the town or county where the owner resides.

Levy to be a  
lien.

May 15, 1820, c.  
107, s. 2, v. 3, p.  
593.

Sec. 3629, R. S.

**239.** The amount due by any delinquent officer is declared to be a lien upon the lands, tenements, and hereditaments of such officer and his sureties, from the date of a levy in pursuance of the warrant of distress issued against

<sup>1</sup>For other statutory provisions in relation to accounts, see the titles "*The Comptroller of the Treasury*" and "*The Auditors of the Treasury*" in the chapter entitled THE TREASURY DEPARTMENT, and the title "*Disbursing Officers*" in the chapter entitled THE STAFF DEPARTMENTS. See also *U. S. v. Kirkpatrick*, 9 Wh., 720; *U. S. v. Van Zandt*, 11 Wh., 184; *U. S. v. Nicholl*, 12 Wh., 505; *Dox v. Postmaster-General*, 1 Pet., 325; *U. S. v. Nourse*, 9 Pet., 8; *Cary v. Curtis*, 3 How., 246; *Murray's Lessee v. Hoboken Co.*, 18 How., 272; *U. S. v. Maurice*, 2 Brock., 96; *Ex parte Randolph*, 2 Brock., 447; *Armstrong v. U. S.*, Gilp., 399.

him or them, and a record thereof made in the office of the clerk of the district court of the proper district, until the same is discharged according to law.

240. For want of goods and chattels of a delinquent officer, or his sureties, sufficient to satisfy any warrant of distress issued pursuant to the foregoing provisions, the lands, tenements, and hereditaments of such officer and his sureties, or so much thereof as may be necessary for that purpose, after being advertised for at least three weeks in not less than three public places in the county or district where such real estate is situate, before the time of sale, shall be sold by the marshal of such district or his deputy.

Sale of lands.  
May 15, 1820, c.  
107, s. 2, v. 3, p.  
593.

Sec. 3630, R.S.

241. For all lands, tenements, or hereditaments sold in pursuance of the preceding section, the conveyance of the marshal or his deputy, executed in due form of law, shall give a valid title against all persons claiming under such delinquent officer or his sureties.

Conveyance of  
lands.  
*Ibid.*

Sec. 3631, R.S.

242. All moneys which may remain of the proceeds of sales, after satisfying the warrant of distress, and paying the reasonable costs and charges of the sale, shall be returned to such delinquent officer or surety, as the case may be.

Disposal of sur-  
plus.  
*Ibid.*

Sec. 3632, R.S.

243. Whenever any officer employed in the civil, military, or naval service of the Government, to disburse the public money appropriated for those branches of the public service, respectively, fails to render his accounts, or to pay over, in the manner and in the times required by law, or by the regulations of the Department to which he is accountable, any sum of money remaining in his hands, it shall be the duty of the proper Auditor, as the case may be, who shall be charged with the revision of the accounts of such officer, to cause to be stated and certified the account of such delinquent officer to the Solicitor of the Treasury, who is hereby authorized and required immediately to proceed against such delinquent officer, in the manner directed in the six preceding sections.

Penalty for fail-  
ure of disbursing  
officer to ac-  
count.

May 15, 1820, c.  
107, s. 3, v. 3, p.  
594; May 29,  
1830, c. 153, s. 1, v.  
4, p. 414; July  
31, 1894; s. 6, v.  
28, p. 206.

Sec. 3633, R.S.

244. All the provisions relating to the issuing of a warrant of distress against a delinquent officer shall extend to every officer of the Government charged with the disbursement of the public money, and to their sureties, in the same manner and to the same extent as if they were herein described and enumerated.

Extent of ap-  
plication of dis-  
tress warrants.

May 15, 1820, c.  
107, s. 3, v. 3, p.  
594.

Sec. 3634, R.S.

245. With the approval of the Secretary of the Treasury, the institution of proceedings by a warrant of distress may be postponed, for a reasonable time, in cases where, in his opinion, the public interest will sustain no injury by such postponement.

Postponement  
of proceedings  
for nonaccount-  
ing, when al-  
lowed.

May 15, 1820, c.  
107, s. 3, v. 3, p.  
594.

Sec. 3635, R.S.



Injunction to  
stay distress  
warrant.  
May 15, 1820, c.  
107, ss. 4, 5, v. 3, p.  
595.

Sec. 3636, R.S.

**246.** Any person who considers himself aggrieved by any warrant of distress issued under the foregoing provisions may prefer a bill of complaint to any district judge of the United States, setting forth therein the nature and extent of the injury of which he complains; and thereupon the judge may grant an injunction to stay proceedings on such warrant altogether, or for so much thereof as the nature of the case requires. But no injunction shall issue till the party applying for it gives bond, with sufficient security, in a sum to be prescribed by the judge, for the performance of such judgment as may be awarded against him; nor shall the issuing of such injunction in any manner impair the lien produced by the issuing of the warrant. And the same proceedings shall be had on such injunction as in other cases, except that no answer shall be necessary on the part of the United States, and if, upon dissolving the injunction, it appears to the satisfaction of the judge that the application for the injunction was merely for delay, the judge may add to the lawful interest assessed on all sums found due against the complainant such damages as, with such lawful interest, shall not exceed the rate of ten per centum a year. Such injunction may be granted or dissolved by the district judge either in or out of court.

Proceedings on  
distress warrant  
in circuit court.  
May 15, 1820, c.  
107, ss. 4, 6, v. 3,  
p. 595; Apr. 10,  
1869, c. 22, s. 2,  
v. 16, p. 44.

Sec. 3637, R.S.

**247.** When the district judge refuses to grant an injunction to stay proceedings on a distress-warrant, as aforesaid, or dissolves such injunction after it is granted, any person who considers himself aggrieved by the decision in the premises may lay before the circuit justice, or circuit judge of the circuit within which such district lies, a copy of the proceeding had before the district judge; and thereupon the circuit justice or circuit judge may grant an injunction, or permit an appeal, as the case may be, if, in his opinion, the equity of the case requires it. The same proceedings, subject to the same conditions, shall be had upon such injunction in the circuit court as are prescribed in the district court.

Rights of  
United States re-  
served.  
May 15, 1820, c.  
107, s. 9, v. 3, p.  
596.

Sec. 3638, R.S.

**248.** Nothing contained in the provisions of this title relating to distress-warrants shall be construed to take away or impair any right or remedy which the United States might have, by law, for the recovery of taxes, debts, or demands.

Duties of dis-  
bursing officers  
as custodians of  
public moneys.

Aug. 6, 1846, c.  
90, s. 6, v. 9, p. 60;  
Mar. 3, 1857, c.  
114, s. 2, v. 11, p.  
249; July 3, 1852, c. 54, s. 7, v. 10, p. 12; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; July 4, 1864, c. 24, s. 5,  
v. 13, p. 383; Apr. 21, 1862, c. 59, s. 5, v. 12, p. 382; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271. **Sec. 3639, R.S.**

**249.** The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer, all collectors of the customs, all surveyors of the customs, acting also as collectors, all receivers of public

moneys at the several land-offices, all postmasters, and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. (*See secs. 5489-5497, R. S.*)

#### TRANSFERS OF FUNDS BY THE SECRETARY OF THE TREASURY.

**250.** The Secretary of the Treasury may, except as provided in the next section, transfer the moneys in the hands of any depositary of public moneys to the Treasury of the United States to the credit of the Treasurer; and he may transfer moneys in the hands of one depositary to any other depositary, as the safety of the public moneys and the convenience of the public service shall seem to him to require.

Transfers of moneys from depositaries to Treasury.

Aug. 6, 1846, c. 90, s. 10, v. 9, p. 61.

Sec. 3640, R. S.

**251.** All moneys paid into the Treasury of the United States shall be subject to the draft of the Treasurer. And for the purpose of payments on the public account the Treasurer is authorized to draw upon any of the depositaries, as he may think most conducive to the public interest and to the convenience of the public creditors. Each depositary so drawn upon shall make returns to the Treasury and Post-Office Departments of all moneys received and paid by him, at such times and in such forms as shall be directed by the Secretary of the Treasury or the Postmaster-General.

Public moneys in Treasury and depositaries subject to draft of Treasurer.

Aug. 6, 1846, c. 90, s. 10, v. 9, p. 61.

Sec. 3644, R. S.

#### PRESENTATION OF DRAFTS.

**252.** It shall be the duty of the Secretary of the Treasury to issue and publish regulations to enforce the speedy presentation of all Government drafts, for payment, at the place where payable, and to prescribe the time, according to the different distances of the depositaries from the seat

Regulations for presentation of drafts.

*Ibid.*, s. 31, p. 65.

Sec. 3645, R. S.

of Government, within which all drafts upon them, respectively, shall be presented for payment; and, in default of such presentation, to direct any other mode and place of payment which he may deem proper; but, in all these regulations and directions, it shall be his duty to guard, as far as may be, against those drafts being used or thrown into circulation as a paper currency or a medium of exchange. (*See secs. 5495, 5496, R. S.*)

## DISBURSING AGENTS.

Par.

253. Expenses of fiscal agents.

254. Collectors to act as disbursing agents.

Par.

255. Special disbursing agents.

256. Compensation of certain disbursing agents.

Expenses of fiscal agents.

Aug. 6, 1846, c. 90, s. 13, v. 9, p. 62.

Sec. 3653, R. S.

253. The officers, respectively, whose duty it is made by this Title to receive, keep, or disburse the public moneys, as the fiscal agents of the Government, may be allowed any necessary additional expenses for clerks, fire-proof chests or vaults, or other necessary expenses of safe-keeping, transferring, or disbursing the moneys; but all such expenses of every character shall be first expressly authorized by the Secretary of the Treasury, whose directions upon all the above subjects, by way of regulation and otherwise, so far as authorized by law, shall be strictly followed by all the officers.<sup>1</sup>

Collectors to act as disbursing agents.

June 12, 1858, c. 154, s. 17, v. 11, p. 327.

Sec. 3657, R. S.

254. The collectors of customs in the several collection districts are required to act as disbursing agents for the payment of all moneys that are or may hereafter be appropriated for the construction of custom-houses, court-houses, post-offices, and marine hospitals; with such compensation, not exceeding one-quarter of one per centum, as the Secretary of the Treasury may deem equitable and just. (*See sec. 255.*)

Special disbursing agents.

July 28, 1866, c. 302, v. 14, p. 341.

Sec. 3658, R. S.

255. Where there is no collector at the place of location of any public work specified in the preceding section, the Secretary of the Treasury may appoint a disbursing agent for the payment of all moneys appropriated for the construction of any such public work, with such compensation as he may deem equitable and just.

Compensation of certain disbursing agents.

Aug. 7, 1882, v. 22, p. 306.

256. Any disbursing agent who has been or may be appointed to disburse any appropriation for any United States court-house and post-office, or other building or grounds, not located within the city of Washington, shall be entitled to the compensation allowed by law to collectors of customs for such amounts as have been or may be disbursed. *Act of August 7, 1882 (22 Stat. L., 306).*

<sup>1</sup> An officer charged with the duty of safely keeping and paying over public money is not relieved from liability although it is destroyed by fire while in his possession and without negligence on his part. (1 Compt. Dec., 191.)

## CHAPTER VI.

### THE POST-OFFICE DEPARTMENT.

Par.	Par.
257. Establishment of the Post-Office Department.	265. Official envelopes to be provided. How franked.
258. Oath of office.	266. Senators, members, etc., may send documents free.
259. Oath, before whom taken.	267. Extension of franking privilege. Official mail of Smithsonian Institution. Return penalty envelopes. Mail matter of Executive Departments, etc., may be registered free.
260. Classes of mail matter. First class.	268. Postmaster-General to contract for all envelopes for Executive Departments.
261. Rates of postage. Soldiers' letters.	
262. Special-delivery stamps.	
263. Specially stamped letters to be delivered.	
264. Letters on official business may be sent free. Penalty for using official envelopes to avoid payment of postage.	

257. There shall be at the seat of Government an Executive Department to be known as the Post-Office Department, and a Postmaster-General, who shall be the head thereof, and who shall be appointed by the President, by and with the advice and consent of the Senate, and who may be removed in the same manner; and the term of the Postmaster-General shall be for and during the term of the President by whom he is appointed, and for one month thereafter, unless sooner removed.

258. Before entering upon the duties of his office and before he shall receive any salary the Postmaster-General and each of the persons employed in the postal service shall respectively take and subscribe before some magistrate or other competent officer the following oath: "I, A. B., do solemnly swear (or affirm) that I will faithfully perform all the duties required of me, and abstain from everything forbidden by the laws in relation to the establishment of post-offices and post-roads within the United States; and that I will honestly and truly account for and pay over any money belonging to the said United States which may come into my possession or control; and I also further swear that

Establishment of the Post-Office Department.  
May 8, 1794, c. 23, s. 3, v. 1, p. 357;  
June 8, 1872, c. 335, ss. 1, 2, v. 17, p. 283.

Sec. 358, R. S.

Oath of office.  
June 8, 1872, c. 335, s. 15, v. 17, p. 287.

Sec. 391, R. S.

I will support the Constitution of the United States; so help me God." *Act of March 5, 1874 (18 Stat. L., 19).*

Oath, before whom taken.

June 8, 1872, c. 335, s. 15, v. 17, p. 287.

259. Any officer, civil or military, holding a commission under the United States is authorized to administer and certify the oath prescribed by the preceding section.

Sec. 392, R. S.

#### CLASSIFICATION OF MAIL MATTER.

Classes of mail matter.

Mar. 3, 1878, s. 7, v. 20, p. 358.

260. That mailable matter shall be divided into four classes:

First, written matter;

Second, periodical publications;

Third, miscellaneous printed matter;

Fourth, merchandise.

First class.

Mailable matter of the first class shall embrace letters, postal cards, and all matters wholly or partly in writing, except as hereinafter provided.<sup>1</sup>

#### RATES OF LETTER POSTAGE.

Rates of postage.

Mar. 3, 1885, vol. 23, p. 386.

261. That on mailable matter of the first class, except postal cards and drop letters, postage shall be prepaid at the rate of two cents for each ounce or fraction thereof; postal cards shall be transmitted through the mails at a postage charge of one cent each, including the cost of manufacture; and drop letters shall be mailed at the rate of two cents per ounce or fraction thereof, including delivery at letter carrier offices, and one cent for each ounce or fraction thereof where free delivery by carrier is not established. The Postmaster General may, however, provide, by regulation, for transmitting unpaid and duly certified letters of soldiers, sailors, and marines in the service of the United States to their destination, to be paid on delivery.<sup>2</sup> *Act of March 3, 1885 (23 Stat. L., 386).*

Soldiers' letters.

#### SPECIAL DELIVERY.

Special-delivery stamps.

Sec. 3, Mar. 3, 1885, vol. 23, p. 386.

262. That a special stamp of the face valuation of ten cents may be provided and issued, whenever deemed advisable or expedient, in such form and bearing such device as may meet the approval of the Postmaster-General, which, when attached to a letter, in addition to the lawful postage thereon, the delivery of which is to be at a free delivery office, or at any city, town, or village containing a population of four thousand or over, according to the Federal census, shall be regarded as entitling such letter to immediate delivery within the carrier limit of any free

<sup>1</sup> For description of matter embraced in the second, third, and fourth classes see the act of March 3, 1879 (20 Stat. L., 358).

<sup>2</sup> Amended as noted by the act of March 3, 1885 (23 Stat. L., 386).

delivery office which may be designated by the Postmaster-General as a special delivery office, or within one mile of the post office at any other office coming within the provisions of this section which may in like manner be designated as a special delivery office. *Sec. 3, act of March 3, 1885 (23 Stat. L., 386).*

**263.** That such specially stamped letters shall be delivered from seven o'clock ante meridian up to twelve o'clock midnight at offices designated by the Postmaster-General under section three of this act. *Sec. 4, ibid.*

Specially stamped letters to be delivered.  
*Sec. 4, ibid.*

#### OFFICIAL LETTERS.

**264.** That it shall be lawful to transmit through the mail, free of postage, any letters, packages, or other matters relating exclusively to the business of the Government of the United States: *Provided*, That every such letter or package to entitle it to pass free shall bear over the words "Official business" an endorsement showing also the name of the Department, and, if from a bureau or office, the names of the Department and bureau or office, as the case may be, whence transmitted. And if any person shall make use of any such official envelope to avoid the payment of postage on his private letter, package, or other matter in the mail, the person so offending shall be deemed guilty of a misdemeanor, and subject to a fine of three hundred dollars, to be prosecuted in any court of competent jurisdiction. *Sec. 5, act of March 5, 1879 (19 Stat. L., 355).*

Letters etc., on official business may be sent free.

*Sec. 5 Mar 3, 1879 v. 19, p 355.*

Penalty for using official envelopes to avoid payment of postage.

**265.** That for the purpose of carrying this act into effect, it shall be the duty of each of the Executive Departments of the United States to provide for itself and its subordinate offices the necessary envelopes; and in addition to the endorsement designating the Department in which they are to be used the penalty for the unlawful use of these envelopes shall be stated thereon. *Sec. 6, ibid.*

Official envelopes to be provided  
*Sec. 6, ibid*

Indorsement thereon

**266.** That Senators, Representatives, and Delegates in Congress, the Secretary of the Senate, and Clerk of the House of Representatives, may send and receive through the mail, all public documents printed by order of Congress<sup>2</sup>; and the name of each Senator, Representative, Delegate, Secretary of the Senate, and Clerk of the House shall be written thereon, with the proper designation of the office he holds; and the provisions of this section shall apply to each of the persons named therein until the first

Senators members etc., may send documents free  
*Sec 7 ibid.*

How franked.

<sup>1</sup>For regulations respecting the use of penalty envelopes in the transmission of official correspondence, see paragraphs 813-817 Army Regulations of 1895. These envelopes are for use in domestic correspondence only, and will not cover the transportation of letters to foreign countries upon which postage stamps must be used.

<sup>2</sup>Extended to letters addressed, officially, to any officer of the Government by section 3, act of March 3, 1891 (26 Stat. L., 1081).

day of December following the expiration of their respective terms of office. *Sec. 7, ibid.*

Sec. 3, July 5,  
1884, v. 23, p. 158.  
Extension of  
franking privilege.

**267.** The provisions of the fifth and sixth sections of the act entitled "An act establishing post-routes, and for other purposes" approved March third, eighteen hundred and seventy-seven, for the transmission of official mail-matter, be, and they are hereby, extended to all officers of the United States Government, not including members of Congress, the envelopes of such matter in all cases to bear appropriate indorsements containing the proper designation of the office from which or officer from whom the same is transmitted, with a statement of the penalty for their misuse. And the provisions of said fifth and sixth sections are hereby likewise extended and made applicable to all official mail-matter of the Smithsonian Institution: *Provided*, That any Department or officer authorized to use the penalty envelopes may inclose them with return address to any person or persons from or through whom official information is desired, the same to be used only to cover such official information, and indorsements relating thereto:

Official mail  
matter of Smith-  
sonian Institution.  
Return penalty  
envelopes.

Mail matter of  
Executive Departments,  
etc., may be registered  
free.

*Provided further*, That any letter or packet to be registered by either of the Executive Departments, or Bureaus thereof, or by the Agricultural Department, or by the Public Printer, may be registered without the payment of any registry fee; and any part-paid letter or packet addressed to either of said Departments or Bureaus may be delivered free; but where there is good reason to believe the omission to prepay the full postage thereon was intentional, such letter or packet shall be returned to the sender: *Provided further*, That this act shall not extend or apply to pension agents or other officers who receive a fixed allowance as compensation for their services, including expenses of postages. And section thirty-nine hundred and fifteen of the Revised Statutes of the United States, so far as the same relates to stamps and stamped envelopes for official purposes, is hereby repealed. *Sec. 3, act of July 5, 1884 (23 Stat. L., 158).*

#### PURCHASE OF ENVELOPES FOR USE OF THE EXECUTIVE DEPARTMENTS.

Postmaster-General to contract for all envelopes for Executive Departments.

Sec 96 Jan. 12,  
1895, v 28, p 624

**268.** The Postmaster-General shall contract for all envelopes, stamped or otherwise, designed for sale to the public, or for use by his own or other Departments, and may contract for them to be plain or with such printed matter as may be prescribed by the Department making requisition therefor: *Provided*, That no envelope furnished by the Government shall contain any business address or advertisement. *Sec. 96, act of January 12, 1895 (28 Stat. L., 624).*

## CHAPTER VII.

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### THE DEPARTMENT OF JUSTICE—HABEAS CORPUS—THE COURT OF CLAIMS.

#### THE DEPARTMENT OF JUSTICE.

Par.	Par.
269. Establishment of Department of Justice.	276. Conduct and argument of cases.
270. Solicitor-General.	277. Performance of duty by officers of Department of Justice.
271. Duties of Attorney-General.	278. Officers of the Department to perform all legal services required for other Departments.
272. Title to land to be purchased by the United States.	279. Attendance of counsel.
273. Opinion of Attorney-General upon questions of law.	280. Interest of United States in pending suits, who may attend to
274. Legal advice to Departments of War and Navy.	281. Publication of opinions.
275. Reference of questions by Attorney-General to subordinates.	

**269.** There shall be at the seat of Government an Executive Department to be known as the Department of Justice, and an Attorney-General, who shall be the head thereof. Establishment of Department of Justice.  
Sept 24. 1789, c. 20, s 35 v 1 p 92;  
June 22, 1870 c 150, s 1. v 16, p. 162. Sec. 346, R. S.

**270.** There shall be in the Department of Justice an officer learned in the law, to assist the Attorney-General in the performance of his duties, called the Solicitor-General, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of seven thousand dollars a year. In case of a vacancy in the office of Attorney-General, or of his absence or disability, the Solicitor-General shall have power to exercise all the duties of that office. Solicitor General.  
June 22, 1870 c 150 s 2, v 16 p. 162; July 7 1884. v 23, p. 192. Sec. 347, R. S.



Title to land to be purchased by the United States. Sept. 11, 1841. Res. No. 6, v. 5, p. 468.

Sec. 355, R. S.

**271.** No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title,<sup>1</sup> nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.<sup>1</sup>

Duties of Attorney-General.

Sec. 354, R. S.

**272.** The Attorney-General shall give his advice and opinion upon questions of law, whenever required by the President.

Opinion of Attorney-General upon questions of law.

June 22, 1870, c. 150, s. 6, v. 16, p. 163.

Legal advice to Departments of War and Navy.

June 22, 1870, c. 150, s. 6, v. 16, p. 163.

Sec. 357, R. S.

**273.** The head of any Executive Department may require the opinion of the Attorney-General on any questions of law arising in the administration of his Department.<sup>2</sup>

Legal advice to Departments of War and Navy.

June 22, 1870, c. 150, s. 6, v. 16, p. 163.

**274.** Whenever a question of law arises in the administration of the Department of War or the Department of the Navy, the cognizance of which is not given by statute to some other officer from whom the head of the Department may require advice, it shall be sent to the Attorney-General, to be by him referred to the proper officer in his Department, or otherwise disposed of as he may deem proper.

Reference of questions by Attorney-General to subordinates.

June 22, 1870, c. 150, s. 4, v. 16, p. 162.

Sec. 358, R. S.

**275.** Any question of law submitted to the Attorney-General for his opinion, except questions involving a construction of the Constitution of the United States, may be by him referred to such of his subordinates as he may deem appropriate, and he may require the written opinion thereon of the officer to whom the same may be referred. If the opinion given by such officer is approved by the Attorney-

<sup>1</sup> The Attorney-General in certifying the title of land purchased by the Government must look at the question as one of pure law, and can not relax the rules of law on account either of the desirableness of the object or the smallness of the value of the land. 6 Opin. Att. Gen., 432. See, also, the chapters entitled THE PUBLIC LANDS, CONTRACTS AND PURCHASES, AND THE CORPS OF ENGINEERS.

<sup>2</sup> The Attorney-General is not authorized to give an official opinion in any case, except on the call of the President or some one of the heads of Departments. 1 Opin. Att. Gen., 211. Subordinate officers of the Government who desire an official opinion of the Attorney-General must seek it through the head of the Department to which they are accountable. Ibid

General, such approval indorsed thereon shall give the opinion the same force and effect as belong to the opinions of the Attorney-General.<sup>1</sup>

**276.** Except when the Attorney-General in particular cases otherwise directs, the Attorney-General and Solicitor-General shall conduct and argue suits and writs of error and appeals in the Supreme Court and suits in the Court of Claims in which the United States is interested, and the Attorney-General may, whenever he deems it for the interest of the United States, either in person conduct and argue any case in any court of the United States in which the United States is interested, or may direct the Solicitor-General or any officer of the Department of Justice to do so.

**277.** The Attorney-General may require any solicitor or officer of the Department of Justice to perform any duty required of the Department or any officer thereof.

150, s. 14, v. 16, p. 164.

**278.** The officers of the Department of Justice, under the direction of the Attorney-General, shall give all opinions and render all services requiring the skill of persons learned in the law necessary to enable the President and heads of Departments, and the heads of Bureaus and other officers in the Departments, to discharge their respective duties; and shall, on behalf of the United States, procure the proper evidence for, and conduct, prosecute, or defend all suits and proceedings in the Supreme Court and in the Court of Claims, in which the United States, or any officer thereof, as such officer, is a party or may be interested; and no fees shall be allowed or paid to any other attorney or counselor at law for any service herein required of the officers of the Department of Justice, except in the cases provided by section three hundred and sixty-three.

**279.** Whenever the head of a Department or Bureau gives the Attorney-General due notice that the interests of the United States require the service of counsel upon the examination of witnesses touching any claim, or upon the legal investigation of any claim, pending in such Department or Bureau, the Attorney-General shall provide for such service.

<sup>1</sup>The opinions of successive Attorneys-General, possessed of greater or less amount of legal acumen, acquirement, and experience, have come to constitute a body of legal precedents and exposition, having authority the same in kind, if not the same in degree, with decisions of the courts of justice. 6 *ibid.*, 326. The opinion of the Attorney-General for the time being is, in terms, advisory to the Secretary who calls for it; but it is obligatory as the law of the case unless, on appeal by such Secretary to the common superior of himself and the Attorney-General, namely, the President of the United States, it be by the latter overruled. 7 *ibid.*, 692. The Attorney-General will not give a speculative opinion, on an abstract question of law, which does not arise in any case presented for the action of an Executive Department. 11 *ibid.*, 189. He will only give opinions on questions of law arising on facts which are authoritatively stated by a head of Department. 10 *ibid.*, 267.

Conduct and argument of cases.

Sept. 24, 1789, c. 20, s. 35, v. 1, p. 92; June 25, 1868, c. 71, s. 5, v. 15, p. 75; June 22, 1870, c. 150, s. 5, v. 16, p. 162.

Sec. 359, R. S.

Performance of duty by officers of Department of Justice.

June 22, 1870, c. 150, s. 14, v. 16, p. 164. Sec. 360, R. S.

Officers of the Department to perform all legal services required for other Departments.

June 22, 1870, c. 150, s. 14, v. 16, p. 164.

Sec. 361, R. S.

Attendance of counsel.

Feb. 14, 1871, c. 51, s. 3, v. 16, p. 412.

Sec. 364, R. S.

Interest of United States in pending suits, who may attend to.  
June 22, 1870, c. 150, s. 5, v. 16, p. 162.

280. The Solicitor-General, or any officer of the Department of Justice, may be sent by the Attorney-General to any State or District in the United States to attend to the interests of the United States in any suit pending in any of the courts of the United States, or in the courts of any State, or to attend to any other interest of the United States.

Publication of opinions.  
June 22, 1870, c. 150, s. 18, v. 16, p. 165.

281. The Attorney-General shall from time to time cause to be edited, and printed at the Government Printing-Office, an edition of one thousand copies of such of the opinions of the law-officers herein authorized to be given as he may deem valuable for preservation in volumes, which shall be, as to size, quality of paper, printing, and binding, of uniform style and appearance, as nearly as practicable, with volume eight of such opinions, published, by Robert Farnham, in the year eighteen hundred and sixty-eight. Each volume shall contain proper head-notes, a complete and full index, and such foot-notes as the Attorney-General may approve. Such volumes shall be distributed in such manner as the Attorney-General may from time to time prescribe.<sup>1</sup>

Sec. 383, R. S.

HABEAS CORPUS.

- Par.
- 282. Power of courts to issue writs of habeas corpus.
  - 283. Power of judges to grant writs of habeas corpus.
  - 284. Writs of habeas corpus when prisoner is in jail.
  - 285. Application for the writ of habeas corpus.
  - 286. Allowance and direction of the writ.
  - 287. Time of return.
  - 288. Form of return.
  - 289. Body of the party to be produced.
  - 290. Day for hearing.

- Par.
- 291. Denial of return, counter-allegations, amendments.
  - 292. Summary hearing; disposition of party.
  - 293. In cases involving the law of nations, notice to be served on State attorney-general.
  - 294. Appeals in cases of habeas corpus to circuit court.
  - 295. Appeal to Supreme Court.
  - 296. Appeals, how taken.
  - 297. Pending proceedings in certain cases, action by State authority void.

<sup>1</sup> Table showing the period covered by each of the nineteen volumes of the Official Opinions of the Attorneys-General of the United States. (a)

Opinions.	Period.		Opinions.	Period.	
	From—	To—		From—	To—
Vol. 1.....	Aug. 21, 1791	June 6, 1825	Vol. 11.....	Nov. 6, 1863	July 14, 1866
2.....	June 9, 1825	Sept. 21, 1835	12.....	Aug. 1, 1866	Mar. 3, 1869
3.....	Oct. 10, 1835	Feb. 10, 1842	13.....	Mar. 11, 1869	Dec. 21, 1871
4.....	Feb. 11, 1842	June 28, 1848	14.....	Jan. 15, 1872	Sept. 30, 1874
5.....	July 17, 1848	Mar. 3, 1853	15.....	May 27, 1875	Mar. 8, 1878
6.....	Mar. 12, 1853	Oct. 7, 1854	16.....	Apr. 29, 1878	Dec. 22, 1880
7.....	Oct. 9, 1854	July 9, 1856	17.....	Jan. 6, 1881	Apr. 19, 1884
8.....	July 10, 1856	Mar. 4, 1857	18.....	Apr. 23, 1884	Apr. 13, 1887
9.....	Mar. 24, 1857	Dec. 17, 1857	19.....	Apr. 16, 1887	Dec. 31, 1890
10.....	Jan. 3, 1861	Oct. 9, 1863			

a From Vol. 3, Digest of Decisions of the Second Comptroller.

**282.** The Supreme Court and the circuit and district courts shall have power to issue writs of habeas corpus.<sup>1</sup>

**283.** The several justices and judges of the said courts, within their respective jurisdictions, shall have power to grant writs of habeas corpus for the purpose of an inquiry into the cause of restraint of liberty.

Mar. 2, 1833, c. 57, s. 7, v. 4, p. 634; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Aug. 29, 1842, c. 257, s. 1, v. 5, p. 539.

**284.** The writ of habeas corpus shall in no case extend to a prisoner in jail, unless where he is in custody under or by color of the authority of the United States, or is committed for trial before some court thereof; or is in custody for an act done or omitted in pursuance of a law of the United States, or of an order, process, or decree of a court or judge thereof; or is in custody in violation of the Constitution or of a law or treaty of the United States; or, being a subject or citizen of a foreign state, and domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, or order, or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations; or unless it is necessary to bring the prisoner into court to testify.<sup>2</sup>

**285.** Application for writ of habeas corpus shall be made to the court, or justice, or judge authorized to issue the same, by complaint in writing, signed by the person for whose relief it is intended, setting forth the facts concerning the detention of the party restrained, in whose custody he is detained, and by virtue of what claim or authority, if known. The facts set forth in the complaint shall be verified by the oath of the person making the application.

**286.** The court, or justice, or judge to whom such application is made shall forthwith award a writ of habeas cor-

Power of courts to issue writs of habeas corpus.

Sec. 751, R. S. Power of judges to grant writs of habeas corpus.

Sept. 24, 1789, c. 20, s. 14, v. 1, p. 81; Apr. 10, 1869, c. 22, s. 2, v. 16, p. 44;

s. 1, v. 14, p. 385; Sec. 752, R. S.

Writ of habeas corpus when prisoner is in jail.

Sept. 24, 1789, c. 20, s. 14, v. 1, p. 81; Mar. 2, 1833, c. 57, s. 7, v. 4, p. 634; Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385; Aug. 29, 1842, c. 257, s. 1, v. 5, p. 539.

Sec. 753, R. S.

Application for the writ of habeas corpus.

Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.

Sec. 754, R. S.

Allowance and direction of the writ

<sup>1</sup> The Supreme Court may issue the writ in virtue of its original jurisdiction only in cases affecting ambassadors, other public ministers, and consuls, or in those to which a State is a party. Ex parte Hung Hang, 108 U. S., 552. In the exercise of its appellate jurisdiction, it may issue the writ for the purpose of reviewing the judicial decision of some inferior officer or court. Ibid., 553; Ex parte Bollman and Swartwout, 4 Cr., 75; Ex parte Watkins, 7 Pet., 568; Ex parte Wells, 18 How., 307, 328; Ex parte Yerger, 8 Wall., 85; Ex parte Lange, 18 Wall., 163; Ex parte Parks, 93 U. S., 18; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, 100 U. S., 371. Application to the Supreme Court for the issue of the writ must show that the case is within its jurisdiction. In re Milburn, 9 Peters, 704.

<sup>2</sup> A justice of the Supreme Court may issue the writ in any part of the United States where he happens to be, and may make it returnable to himself, or may refer it to the court for determination. Ex parte Clarke, 100 U. S., 399, 403. The writ can not be made to perform the function of a writ of error. Ex parte Virginia, 100 U. S., 339; Ex parte Reed, ibid., 13, 23. The writ may be used in connection with the writ of certiorari to determine whether the court below acted with jurisdiction. Ex parte Lange, 18 Wall., 163; Ex parte Virginia, 100 U. S., 339; Ex parte Siebold, ibid., 371. This section does not require that the law therein mentioned shall be by express act of Congress. Any obligation fairly and properly inferable from the Constitution, or any duty of a United States officer to be derived from the general scope of his duties, is a "law" within the meaning of the statute. Cunningham v. Neagle, 135 U. S., 1. See also Ex parte Dorr, 3 How., 103; Ex parte Barnes, 1 Sprague, 133; Ex parte Bridges, 2 Woods, 428.

Feb. 5, 1867, c.  
28, s. 1, v. 14, p.  
385.

Sec. 755, R. S.

Time of return.  
Feb. 5, 1867, c.  
28, s. 1, v. 14, p.  
385.

Sec. 756, R. S.

Form of return.  
Feb. 5, 1867, c.  
28, s. 1, v. 14, p.  
385.

Sec. 757, R. S.

Body of the party  
to be produced.  
Feb. 5, 1867, c.  
28, s. 1, v. 14, p. 385.

Sec. 758, R. S.

Day for hear-  
ing.  
Feb. 5, 1867, c.  
28, s. 1, v. 14, p. 385.

Sec. 759, R. S.

pus, unless it appears from the petition itself that the party is not entitled thereto. The writ shall be directed to the person in whose custody the party is detained.<sup>1</sup>

**287.** Any person to whom such writ is directed shall make due return thereof within three days thereafter, unless the party be detained beyond the distance of twenty miles; and if beyond that distance and not beyond a distance of a hundred miles, within ten days; and if beyond the distance of a hundred miles, within twenty days.<sup>2</sup>

**288.** The person to whom the writ is directed shall certify to the court, or justice, or judge before whom it is returnable the true cause of the detention of such party.<sup>2</sup>

**289.** The person making the return shall at the same time bring the body of the party before the judge who granted the writ.<sup>2</sup>

**290.** When the writ is returned, a day shall be set for the hearing of the cause, not exceeding five days thereafter, unless the party petitioning requests a longer time.

<sup>1</sup> In the courts of the United States the practice prevailing at the common law at the time of the adoption of the Constitution is still pursued. The writ may be granted in term time or by a justice or judge of a Federal court, having jurisdiction to issue the writ, in vacation, or at any time, and may be issued by a justice of the Supreme Court in any part of the country, wherever he may be. *Hurd, Hab. Corp.*, 214; *U. S. v. Clarke*, 100 U. S., 403. The usual course of proceeding is for the court, on the application of the prisoner for a writ of habeas corpus, to issue the writ and, on its return, to hear and dispose of the case; but where the cause of imprisonment is fully shown by the petition, the court may, without issuing the writ, consider and determine whether, upon the grounds presented in the petition, the prisoner, if brought before the court, would be discharged. *Ex parte Milligan*, 4 Wall., 2. Under the requirements of this section, the writ, though a matter of right, does not issue as a matter of course and may be refused if, upon the showing made in the petition, it appear that the petitioner, if brought into court would be remanded. *In re King*, 51 F. R., 434; *In re Jordan*, 49 F. R., 238; *In re Haskell*, 52 F. R., 795. Suspension of the privilege of the writ does not suspend the writ itself. The writ issues as a matter of course; and, on its return, the court decides whether the applicant is denied the privilege of proceeding any further. *Ex parte Milligan*, 4 Wall., 2.

<sup>2</sup> The duty of an officer of the Army upon whom a writ of habeas corpus is served is prescribed in the following paragraphs of the Army Regulations of 1895:

969. Officers will make respectful returns in writing to all writs of habeas corpus served on them. When the writ is issued by a State authority, and the person held by the Army officer is a civilian who has been apprehended under a warrant of attachment to be taken before a court-martial to testify as a witness, the officer will not produce the body, but will, by his return, set forth fully the authority by which he holds the person, and allege that the State authority is without jurisdiction to issue the writ of habeas corpus, and ask to have the same dismissed. He will also exhibit to the court or officer issuing the writ of habeas corpus the warrant of attachment and the subpoena (and the proof of the service of the subpoena) on which the warrant of attachment was based, and also a certified copy of the order convening the court-martial before which he had been commanded to take the person.

970. Should a writ of habeas corpus issued by a State court or judge be served upon an Army officer commanding him to produce an enlisted man or show cause for his detention, the officer will decline to produce in court the body of the person named in the writ, but will make respectful return in writing to the effect that the man is a duly enlisted soldier of the United States, and that the Supreme Court of the United States has decided that a magistrate or court of a State has no jurisdiction in such a case.

971. A writ of habeas corpus issued by a United States court or judge will be promptly complied with. The person alleged to be illegally restrained of his liberty will be taken before the court from which the writ has issued, and a return made setting forth the reasons for his restraint. The officer upon whom such a writ is served will at once report the fact of such service direct to the Adjutant-General of the Army by telegraph.

The form of return to the writ will be found in the Manual for Courts-Martial, pages 146-148.

If the service of the writ be prevented by military force, it will be ordered to be placed on the files of the court, to be served when practicable. *Ex parte Winder*, 2 Clifford, 89.

An order from a subordinate in the War Department to an officer not to obey the writ by the production of the body, is no justification to the officer. *Ex parte Field*, 5 Blatchford, C. C., 63.

**291.** The petitioner or the party imprisoned or restrained may deny any of the facts set forth in the return, or may allege any other facts that may be material in the case. Said denials or allegation shall be under oath. The return and all suggestions made against it may be amended, by leave of the court, or justice, or judge, before or after the same are filed, so that thereby the material facts may be ascertained.

Denial of return, counter-allegations, amendments.  
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.

Sec. 760, R. S.

**292.** The court, or justice, or judge shall proceed in a summary way to determine the facts of the case, by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require.<sup>1</sup>

Summary hearing; disposition of party.  
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.

Sec. 761, R. S.

<sup>1</sup> The purpose of the writ is to enable the court to inquire, first, if the petitioner is restrained of his liberty. If he is not, the court can do nothing but discharge the writ. If there is such restraint, the court can then inquire into the causes of it, and if the alleged cause is unlawful, it must then discharge the petitioner. In the case of a man in the military or naval service, where he is, whether as an officer or private, always more or less subject in his movements, by the very necessity of military rule and subordination, to the orders of his superior officer, it should be quite clear that some unusual restraint upon his liberty of personal movement exists to justify the issue of the writ; otherwise every order of the superior officer directing the movements of the subordinate, which necessarily, to some extent controls his freedom of will, may be held to be a restraint of his liberty and the party so ordered may seek relief from obedience by means of a writ of habeas corpus. Something more than moral restraint is necessary to make a case for habeas corpus. There must be actual confinement or the present means of enforcing it. *Wales v. Whitney*, 114 U. S., 564, 571. Where a court-martial has jurisdiction of the person and of the subject-matter and is competent to pass the sentence under which the prisoner is held, its proceedings can not be collaterally impeached, and a writ of habeas corpus can not be made to perform the function of a writ of error. *Ex parte Reed*, 100 U. S., 13, 23; *Ex parte Kearney*, 7 Wheat., 38; *Ex parte Watkins*, 3 Pet., 193; *Ex parte Milligan*, 4 Wall., 2; *Ex parte Mason*, 105 U. S., 696; *Ex parte Curtis*, 106 U. S., 371; *Ex parte Carrl*, *ibid.*, 521; *Ex parte Bigelow*, 113 U. S., 328; *Smith v. Whitney*, 116 U. S., 167; *U. S. v. Grimley*, 137 U. S., 147; *Johnson v. Sayre*, 158 U. S., 109; *In re Boyd*, 49 F. R., 48. Where a medical director in the Navy, against whom charges had been preferred and in whose case a general court-martial had been ordered, was placed in arrest by the Secretary of the Navy, and notified to confine himself to the limits of the city of Washington: *Held*, That this constituted no such restraint of liberty as to sustain a writ of habeas corpus. *Wales v. Whitney*, 114 U. S., 564. Where a person is in custody under process from a State court of original jurisdiction, for an alleged offense against the laws of such State, and it is claimed that he is restrained of his liberty in violation of the Constitution of the United States, the circuit court has a discretion whether it will discharge him upon habeas corpus, in advance of his trial in the court in which he is indicted; that discretion, however, to be subordinated to any special circumstances requiring immediate action. When the State court has finally acted upon the case, the circuit court has still a discretion whether, under all the circumstances, the accused, if convicted, shall be put to his writ of error from the highest court of the State, or whether it will proceed, by writ of habeas corpus, summarily to determine whether the prisoner is restrained of his liberty in violation of the Constitution of the United States. *Ex parte Royall*, 117 U. S., 241, 253; *Ex parte Watkins*, 3 Pet., 201; *Ex parte Bridges*, 2 Woods, 428; *Ex parte Lange*, 18 Wall., 163; *In re King*, 51 F. R., 434; *Ex parte Hanson*, 28 F. R., 127, 131; *In re Jordan*, 49 F. R., 238. Where a United States marshal, in custody for an act done in pursuance of a law of the United States is brought before a Federal court by habeas corpus and discharged, he can not afterwards be tried by the State courts. *Cunningham v. Neagle*, 135 U. S., 1.

*Conflict of State and Federal authority.*—The writ of habeas corpus is a high prerogative writ known to the common law, the great object of which is the liberation of those who may be imprisoned without sufficient cause. It is in the nature of a writ of error to examine the legality of the commitment. *Ex parte Watkins*, 3 Pet., 202. The Federal courts by whom, and the cases in which, it may be issued are described in sections 751, 752, 753, 754, 762, 763, 764, and 765 of the Revised Statutes. Subject to the paramount authority of the National Government, by its own tribunals, to inquire into the legality of custody of prisoners held by the United States courts or officers, the States may inquire into the grounds on which any person in their respective limits is restrained of his liberty. *Kobb v. Connolly*, 111 U. S., 624. A State court has no jurisdiction by habeas corpus to release a prisoner held by order of Federal court. *Ableman v. Booth*, 21 How., 506. And a judicial officer of a State can not, by means of a writ of habeas corpus, take and discharge a person held by, or under color of authority of the United States. If it appear upon the return to a writ of habeas corpus that the person is detained under color of the authority of the United States, the State court has no further jurisdiction. *Tarble's Case*, 13 Wall., 397. We do not question the authority of the State court or judge who is authorized by the laws of the State to issue the writ of habeas corpus, to issue it in any case where the party is imprisoned within its territorial limits, provided it does not appear, when the

In cases involving the law of nations, notice to be served on State attorney-general.  
 Aug. 29, 1842, c. 257, v. 5, p. 539.

**293.** When a writ of habeas corpus is issued in the case of any prisoner who, being a subject or citizen of a foreign state and domiciled therein, is committed, or confined, or in custody, by or under the authority or law of any one of the

**Sec. 762, R. S.** United States, or process founded thereon, on account of any act done or omitted under an alleged right, title, authority, privilege, protection, or exemption, claimed under the commission or order or sanction of any foreign state, or under color thereof, the validity and effect whereof depend upon the law of nations, notice of the said proceeding, to be prescribed by the court, or justice, or judge at the time of granting said writ, shall be served on the attorney-general or other officer prosecuting the pleas of said State, and due proof of such service shall be made to the court, or justice, or judge before the hearing.

Appeals in cases of habeas corpus to circuit court.

Aug. 29, 1842, c. 257, v. 5, p. 539;  
 Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385;  
 Mar. 27, 1868, c. 34, s. 2, v. 15, p. 44.

**294.** From the final decision of any court, justice, or judge inferior to the circuit court, upon an application for a writ of habeas corpus or upon such writ when issued, an appeal may be taken to the circuit court for the district in which the cause is heard:

**1.** In the case of any person alleged to be restrained of his liberty in violation of the Constitution, or of any law or treaty of the United States.

**2.** In the case of any prisoner who, being a subject or citizen of a foreign state, and domiciled therein, is com-

application is made, that the person imprisoned is in custody under the authority of the United States. The court or judge has a right to inquire, in this mode of proceeding, for what cause and by what authority the prisoner is confined within the territorial limits of the State sovereignty. And it is the duty of the marshal, or other person having the custody of the prisoner, to make known to the judge or court, by a proper return, the authority by which he holds him in custody. \* \* \* But, after the return is made, and the State judge or court judicially apprised that the party is in custody under the authority of the United States, they can proceed no further. \* \* \* And although, as we have said, it is the duty of the marshal, or other person holding him, to make known, by a proper return, the authority under which he detains him, it is at the same time imperatively his duty to obey the process of the United States, to hold the prisoner in custody under it, and to refuse obedience to the mandate or process of any other Government. And consequently it is his duty not to take the prisoner, nor suffer him to be taken, before a State judge or court upon a habeas corpus issued under State authority. No State judge or court, after they are judicially informed that the party is imprisoned under the authority of the United States, has any right to interfere with him, or to require him to be brought before them. And if the authority of a State, in the form of a judicial process or otherwise, should attempt to control the marshal or other authorized officer or agent of the United States, in any respect, in the custody of his prisoner, it would be his duty to resist it, and to call to his aid any force that might be necessary to maintain the authority of law against illegal interference. No judicial process, whatever form it may assume, can have any lawful authority outside of the limits of the jurisdiction of the court or judge by whom it was issued and an attempt to enforce it beyond these boundaries is nothing less than lawless violence. *Ableman v. Booth*, 21 How., 506. A State judge has no jurisdiction to issue a writ of habeas corpus for a prisoner in custody of an officer of the United States, if the fact of such custody is known to him before issuing the writ; and if such fact appears on the return to the writ, all further proceedings by him are void. And if the United States officer resist the enforcement of the State writ, and is imprisoned therefor, he will be discharged by the Federal court. *Ex parte Sifford*. 5 Am. Law Reg. (O. S., 659). A military officer of the United States is not bound to produce the body of an enlisted soldier in answer to a writ of habeas corpus issued from a State court or judge. In *re Neill*, 8 Blatch., 166. The return of a military officer to a writ of habeas corpus need not be on oath. In *re Neill*, 8 Blatch., 165. The validity of the enlistment of a soldier can not be inquired into by a State court, by the issue of a writ of habeas corpus, and an officer of the Army may properly refuse to discharge an enlisted man in his command upon the order of a State court. In *re Farrand*, 1 Abbot, 140, 147.

mitted or confined, or in custody by or under the authority or law of the United States, or of any State, or process founded thereon, for or on account of any act done or omitted under any alleged right, title, authority, privilege, protection, or exemption, set up or claimed under the commission, order, or sanction of any foreign state or sovereignty, the validity and effect whereof depend upon the law of nations, or under color thereof.<sup>1</sup>

295. From the final decision of such circuit court an appeal may be taken to the Supreme Court in the cases described in the preceding section. Appeal to Supreme Court.  
Aug. 29, 1842, c. 257, v. 5, p. 539;  
Sec. 764, R. S.

296. The appeals allowed by the two preceding sections shall be taken on such terms, and under such regulations and orders, as well for the custody and appearance of the person alleged to be in prison or confined or restrained of his liberty, as for sending up to the appellate tribunal a transcript of the petition, writ of habeas corpus, return thereto, and other proceedings, as may be prescribed by the Supreme Court, or, in default thereof, by the court or judge hearing the cause. Appeals, how taken.  
Aug. 29, 1842, c. 257, v. 5, p. 539;  
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385.  
Sec. 765, R. S.

297. Pending the proceedings or appeal in the cases mentioned in the three preceding sections, and until final judgment therein, and after final judgment of discharge, any proceeding against the person so imprisoned or confined or restrained of his liberty, in any State court, or by or under the authority of any State, for any matter so heard and determined, or in process of being heard and determined, under such writ of habeas corpus, shall be deemed null and void. That no appeal shall be had or allowed after six months from the date of the judgment or order complained of. *Act of March 3, 1893 (27 Stat. L., 751.)* Pending proceedings in certain cases, action by State authority void.  
Aug. 29, 1842, c. 257, v. 5, p. 539;  
Feb. 5, 1867, c. 28, s. 1, v. 14, p. 385;  
Mar. 3, 1893, v. 27, p. 751.  
Sec. 766, R. S.

## THE COURT OF CLAIMS.<sup>2</sup>

### JURISDICTION, POWERS, AND PROCEDURE.

Par.	Par.
298. Jurisdiction.	301. Decree on account of paymasters, etc.
299. Private claims in Congress, when transmitted to Court of Claims.	302. Claims referred by Departments.
300. Judgments for set-off or counter-claim, how enforced.	303. Procedure in cases transmitted by Departments.

<sup>1</sup> Ex parte McCordle, 6 Wall., 318; Ex parte McCordle, 7 Wall., 506; Ex parte Yerger, 8 Wall., 85.

<sup>2</sup> The Court of Claims was established by the acts of February 24, 1855 (10 Stat. L., 612), March 3, 1863 (12 Stat. L., 765), and May 8, 1872 (17 Stat. L., 85). This court was created with a view to give legal redress to the citizen as against the Government where he would have had legal redress as against another citizen. It is a curious fact, not generally known, that the example of Prussia and the German States in guarding the private rights of persons by subjecting the Government, in matters of account, to the judicial power of ordinary courts of justice, led to the establishment of the Court of Claims. *Brown v. U. S.*, 5 C. Cls. R., 571, 577. The provisions of the act of March 3, 1863, authorizing the Court of Claims to hear and determine, without a jury, claims against Government with set-offs, is not unconstitutional. *McElrath v. U. S.*, 102 U. S., 426.



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| <p>Par.</p> <p>304. Judgments in cases transmitted by Departments, how paid.</p> <p>305. Claims growing out of treaties not cognizable therein.</p> <p>306. Claims pending in other courts not to be prosecuted in Court of Claims.</p> <p>307. Aliens.</p> <p>308. Limitation.</p> <p>309. Rules of practice; contempts.</p> <p>310. Oaths and acknowledgments.</p> <p>311. Petition.</p> <p>312. Petition dismissed if issue found against claimant as to allegiance, etc.</p> <p>313. Burden of proof and evidence as to loyalty.</p> <p>314. Commissioner to take testimony.</p> <p>315. Power to call upon Departments for information.</p> <p>316. Testimony not to be taken, when.</p> | <p>Par.</p> <p>317. Witnesses not excluded on account of color.</p> <p>318. Examination of claimant.</p> <p>319. Testimony taken where deponent resides.</p> <p>320. Witnesses, how compelled to attend before commissioners.</p> <p>321. Cross-examination.</p> <p>322. Witnesses, how sworn.</p> <p>323. Fees of commissioner, by whom paid.</p> <p>324. Claims forfeited for fraud.</p> <p>325. New trial on motion of claimant.</p> <p>326. New trial on motion of United States.</p> <p>327. Payment of judgments.</p> <p>328. Interest.</p> <p>329. Interest on claims.</p> <p>330. Payment of judgment a full discharge, etc.</p> <p>331. Final judgments a bar.</p> <p>332-338. The Bowman Act.</p> <p>339-353. The Tucker Act.</p> |
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## Jurisdiction.

**298.** The Court of Claims shall have jurisdiction to hear and determine the following matters:

Claims founded on statutes or contracts, or referred by Congress.

Feb. 24, 1855, c. 122, s. 1, v. 10, p. 612; June 22, 1874, c. 393, s. 2, v. 18, p. 192; Mar. 3, 1875, c. 149, v. 18, p. 481.

First. All claims founded upon any law of Congress,<sup>1</sup> or upon any regulation of an Executive Department,<sup>2</sup> or upon any contract, expressed or implied,<sup>3</sup> with the Government

## Sec. 1059, R. S.

<sup>1</sup> A claimant presenting a claim founded upon a law of Congress has a legal right under section 1059, Revised Statutes, to a definitive adjudication; and the power of the court to afford that can not be considered as interfered with by anything short of a lodgment of the power of definitive adjudication in some other tribunal or officer. *Thomas v. U. S.*, 16 C. Cls. R., 522. The rejection of a claim by the accounting officers leaves the party to pursue his remedy at law, viz. an action in this court, though he may have accepted the portion allowed. *Longwill v. U. S.*, 17 C. Cls. R., 288; *U. S. v. Kaufman*, 96 U. S., 567.

<sup>2</sup> Regulations of an Executive Department are rules relating to the subjects on which a Department acts and are made by its head under an act of Congress conferring that power and thereby giving such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. *Harvey v. U. S.*, 3 C. Cls. R., 38. By the term "any regulation" is doubtless intended any regulation within the lawful discretion of the head of an Executive Department. \* \* \* When Congress permits regulations to be formulated and published and carried into effect year after year, the legislative ratification must be implied. *Maddox v. U. S.*, 20 C. Cls. R., 193, 198.

<sup>3</sup> The jurisdiction of the Court of Claims is confined to suits arising from contracts express or implied. *Langford v. U. S.*, 101 U. S., 341. The United States can not be sued in the Court of Claims on equitable considerations merely. *Bonner v. U. S.*, 9 Wall., 156. The language of the statutes which confer jurisdiction on the Court of Claims excludes, by the strongest implication, demands against the Government founded on torts. In such cases, where it is proper for the nation to furnish a remedy, Congress has wisely reserved the matter for its own determination. *Gibbons v. U. S.*, 8 Wall., 269, 275; *Reed v. U. S.*, 11 Wall., 591; *Langford v. U. S.*, 101 U. S., 341. See, also, paragraphs 339-353 *post*.

## CONTRACTS.

The Court of Claims, in the construction and enforcement of contracts, is bound to apply the principles which govern like contracts between individuals. *U. S. v. Smoot*, 15 Wall., 36; *Curtis v. U. S.*, 2 C. Cls. R., 144; *Brooke v. U. S.*, *ibid.*, 180. All questions of salary are questions of contract, and whether the salary is fixed by law, or by order of a Department under authority of law, the Government contracts to pay the officer his salary, and, failing to do so, a suit therefor may be maintained in this court, whether the case arises under a revenue act or any other. *Patton v. U. S.*, 7 C. Cls. R., 362. The United States can no more discharge its contracts by such performance than can an individual person do so. Congress may fail to appropriate, in whole or in part, the money required for payment of a public creditor, and thus leave the

of the United States, and all claims which may be referred to it by either House of Congress.

Second. All set-offs,<sup>1</sup> counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever, on the part of the Government of the United States against any person making claim against the Government in said court.

Third. The claim of any paymaster, quartermaster, commissary of subsistence, or other disbursing officer of the United States, or of his administrators or executors, for

Set-offs and counterclaims of United States. Mar. 3, 1863, c. 92, s. 3, v. 12, p. 765.

Disbursing officers. May 9, 1866, v. 14, p. 44.

public officer without authority to draw money from the Treasury for that purpose, but the indebtedness and liability remain in force. *Mitchell v. U. S.*, 18 C. Cls. R., 281, 287; *Graham v. U. S.*, 1 *ibid.*, 380; *Collins v. U. S.*, 15 *ibid.*, 22; *French v. U. S.*, 16 *ibid.*, 419. An officer who has been wholly retired from the service, but in whose case the order of retirement has been revoked by the President, who directs his name to be placed on the retired list, is an officer de facto, and, though illegally on such retired list, money paid him by way of salary, so long as he holds the office in good faith, can not be recovered back. When one claiming to be an officer renders no service and holds no official relations with the Government, money paid him for salary may be recovered back. *Miller v. U. S.*, 19 C. Cls. R., 338. In an action in the Court of Claims to recover a balance claimed to be due on pay account, the United States can set up, as a counterclaim, an alleged overpayment to him on account of pay, and can have judgment for its collection. *U. S. v. Burchard*, 125 U. S., 176; *McElrath v. U. S.*, 102 U. S., 426.

An officer can only bind the Government by acts which come within a just exercise of his official power. *Hunter v. U. S.*, 5 Pet., 173, 178; *The Floyd Acceptances*, 7 Wall., 666; *Whiteside v. U. S.*, 93 U. S., 247. Unless the Government has ratified a contract of an officer in excess of his authority, or received the benefit of it, it is not liable. The ratification of some of a series of unauthorized acts is not to be construed to be an approval of any not specified. *Pitcher v. U. S.*, 1 C. Cls. R., 7; *De Celis v. U. S.*, 13 C. Cls. R., 117.

#### IMPLIED CONTRACTS.

To constitute an implied contract "there must have been some consideration moving to the United States; or they must have received the money, charged with a duty to pay it over; or the claimant must have had a lawful right to it when it was received, as in the case of money paid by mistake. *Knote v. U. S.*, 95 U. S., 149, 156. A contract to reimburse is implied when the Government takes private property for public use. Such a taking of private property by the Government when the emergency of the public service in time of war, or impending public danger, is too urgent to admit of delay, is everywhere regarded as justified, if the necessity for the use of the property is imperative and immediate and the danger, as heretofore described, is impending; and it is equally clear that the taking of such property, under such circumstances, creates an obligation on the part of the Government to reimburse the owner to the full value of the service. Private rights, under such extreme and imperious circumstances, must give way, for the time, to the public good, but the Government must make full restitution for the sacrifice. *U. S. v. Russell*, 13 Wall., 623, 629. Beneficial volunteer service does not raise an implied contract, unless there has been an inducement, agreement, or ratification. *Boston v. The District of Columbia*, 19 C. Cls. R., 31. The court has jurisdiction of a suit by a patentee for the royalty agreed to be paid for the use of his invention by an authorized officer of the Government. *Burns v. U. S.*, 12 Wall., 246.

A contract is implied from the fact that the Government manufactured a patented military device, without market value, on the solicitation of the patentee, that it should pay for the right to use the invention. *Palmer v. U. S.*, 128 U. S., 262. The United States may be sued for use of a patented invention by its officers for its benefit if the right of the patentee is acknowledged. *Hollister v. Benedict Manufacturing Co.*, 113 U. S., 59; *U. S. v. Burns*, 12 Wall., 246. When an officer of the Government is properly assigned to the work of devising something to be used in the public service, the Government meeting the expenses and paying the officer his usual salary, the Government is not liable for royalty on the invention, though it was made by the officer previous to the time he was assigned to the work, if the labor and expense of perfecting it was borne by the Government. *Solomons v. U. S.*, 22 C. Cls. R., 335; 21 *ibid.*, 479. The policy of the War Department of late years toward inventors has been one of neutrality, neither denying nor admitting legal rights, but taking inventions to perfect the Government arms, leaving inventors free to seek redress without prejudice before other tribunals than an Executive Department. *Berdan v. U. S.*, 26 C. Cls. R., 48, 60. See also *Clyde v. U. S.*, 13 Wall., 38; *U. S. v. Russell*, 13 Wall., 623; *U. S. v. Bostwick*, 94 U. S., 53; *Fichera's Case*, 9 C. Cls. R., 254; *Macaulay's Case*, 11 C. Cls. R., 693; *Clark's Case*, 11 C. Cls. R., 698; *Roman et al. v. U. S.*, 11 C. Cls. R., 761; *Campbell's Case*, 13 C. Cls. R., 470.

<sup>1</sup>The right of set-off did not exist at common law, and is everywhere founded upon statutory regulation. *Tillou v. U. S.*, 1 C. Cls. R., 454; 2 *ibid.*, 588, and *U. S. v. Eckford*, 6 Wall., 484. State laws in such a case do not constitute the rule of decision, but the question arises, exclusively, under the act of Congress; and no local law nor usage can have any influence in its determination. *Ibid.*; *Reeside v. Walker*, 11 How., 272, 290.

relief from responsibility on account of capture or otherwise, while in the line of his duty, of Government funds, vouchers, records, or papers in his charge, and for which such officer was and is held responsible.<sup>1</sup>

Claims for captured and abandoned property.

Mar. 12, 1863, c. 120, s. 3, v. 12, p. 820; July 2, 1864, c. 225, ss. 2, 3, v. 13, pp. 375, 376; July 27, 1868, c. 276, s. 3, v. 15, p. 243.

Fourth. Of all claims for the proceeds of captured or abandoned property, as provided by the act of March 12, eighteen hundred and sixty-three, chapter one hundred and twenty, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," or by the act of July two, eighteen hundred and sixty-four, chapter two hundred and twenty-five, being an act in addition thereto: *Provided*, That the remedy given in cases of seizure under the said acts, by preferring claim in the Court of Claims, shall be exclusive, precluding the owner of any property taken by agents of the Treasury Department as abandoned or captured property in virtue or under color of said acts from suit at common law, or any other mode of redress whatever, before any court other than said Court of Claims.<sup>2</sup>

Private claims in Congress, when transmitted to Court of Claims.

Mar. 3, 1863, c. 92, s. 2, v. 12, p. 765.

Sec. 1060, R. S.

299. All petitions and bills praying or providing for the satisfaction of private claims against the Government, founded upon any law of Congress, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, shall, unless otherwise ordered by resolution of the

<sup>1</sup> Under this provision relief has been afforded to a paymaster who was attacked and robbed by highwaymen. *Broadhead v. U. S.*, 19 C. Cls. R., 125. To a disbursing officer for loss by the failure of a national bank, which was a designated depository. *Hobbs v. U. S.*, 17 *ibid.*, 189. To a disbursing officer for money stolen from a safe. *Scott v. U. S.*, 18 *ibid.*, 1; *Clark v. U. S.*, 11 *ibid.*, 698; *Howell v. U. S.*, 7 *ibid.*, 512. To a quartermaster for money lost from his person, the money being carried in the way such officers usually carry it on similar occasions, under circumstances utterly free from suspicion and after diligent efforts had been made to recover the same. *Whitelsey v. U. S.*, 5 *ibid.*, 452. To a quartermaster for money stolen from his room, due precautions for its safety having been taken. *Malone v. U. S.*, 5 *ibid.*, 486; *Norton v. U. S.*, 2 *ibid.*, 523. To a paymaster for money contained in a treasure box stolen by soldiers at a garrison. *Glenn v. U. S.*, 4 *ibid.*, 501. To an engineer officer for money captured by the enemy. *Prince v. U. S.*, 3 *ibid.*, 209. To a paymaster for funds and vouchers captured by the enemy. *Ruggles v. U. S.*, 2 *ibid.*, 520; *Moore v. U. S.*, *ibid.*, 522; *Beckwith v. U. S.*, *ibid.*, 526; *Hubbell v. U. S.*, *ibid.*, 527. To an acting commissary of subsistence for money expended, the expenditures being covered by vouchers captured by the enemy. *Murphy v. U. S.*, 3 *ibid.*, 212.

Relief has been denied to a paymaster for money embezzled by a clerk, the loss having been made good by the disbursing officer, under pressure, but without protest on his part. *Hall v. U. S.*, 9 C. Cls. R., 270. In the case of a paymaster for funds stolen by an orderly detailed for messenger duty in his office. *Holman v. U. S.*, 11 *ibid.*, 642. To a collector of revenue, for the value of revenue stamps stolen from his office, during his absence therefrom, said collector not being a disbursing officer within the meaning of the statute. *Stapp v. U. S.*, 4 *ibid.*, 219. To an acting commissary of subsistence in Dakota, for money alleged to have been stolen, no testimony having been offered in the case but his own. *Pattee v. U. S.*, 3 *ibid.*, 397. In a case arising under this provision, the petitioner is a competent witness to prove the amount of money lost, if the loss itself be established by other testimony. *U. S. v. Clark*, 96 U. S., 37; *Hobbs v. U. S.*, 17 C. Cls. R., 189; *Scott v. U. S.*, 18 *ibid.*, 1; *Broadhead v. U. S.*, 19 *ibid.*, 125; *Hoyle v. U. S.*, 21 *ibid.*, 300. An acting commissary of subsistence is entitled to relief under the provisions of this statute, and it is not necessary that the officer should have given a bond to entitle him to relief. *Wood v. U. S.*, 25 *ibid.*, 98. It was held by the Supreme Court in *U. S. v. Smith* (14 C. Cls. R., 114, and 105 U. S., 620) that the statute of limitation applied to cases arising under this section. See also *U. S. v. Clark*, 96 U. S., 37.

<sup>2</sup> *U. S. v. Anderson*, 9 Wall., 56; *Pugh v. U. S.*, 13 Wall., 633; *U. S. v. Kimball*, 13 Wall., 636; *U. S. v. Crussell*, 14 Wall., 1; *Slawson v. U. S.*, 16 Wall., 310.

House in which they are introduced, be transmitted by the Secretary of the Senate or the Clerk of the House of Representatives, with all the accompanying documents, to the Court of Claims.

**300.** Upon the trial of any cause in which any set-off, counter-claim, claim for damages, or other demand is set up on the part of the Government against any person making claim against the Government in said court, the court shall hear and determine such claim or demand both for and against the Government and claimant; and if upon the whole case it finds that the claimant is indebted to the Government, it shall render judgment to that effect, and such judgment shall be final, with the right of appeal, as in other cases provided for by law. Any transcript of such judgment, filed in the clerk's office of any district or circuit court, shall be entered upon the records thereof, and shall thereby become and be a judgment of such court and be enforced as other judgments in such courts are enforced.<sup>1</sup>

Judgments for set-off or counter-claim, how enforced.

Mar. 3, 1863, c. 92, s. 3, v. 12, p. 765.

Sec. 1061, R. S.

**301.** Whenever the Court of Claims ascertains the facts of any loss by any paymaster, quartermaster, commissary of subsistence, or other disbursing officer, in the cases hereinbefore provided, to have been without fault or negligence on the part of such officer, it shall make a decree setting forth the amount thereof, and upon such decree the proper accounting officers of the Treasury shall allow to such officer the amount so decreed, as a credit in the settlement of his accounts.

Decree on accounts of paymasters, etc.

May 9, 1866, c. 75, s. 2, v. 14, p. 44.

Sec. 1062, R. S.

**302.** Whenever any claim is made against any Executive Department, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of any Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant; and the Secretary of the Treasury may, upon the certificate of any Auditor or Comptroller of the Treasury, direct any account, matter, or claim, of the character,

Claims referred by Departments.

June 25, 1868, c. 71, s. 7, v. 15, p. 76.

Sec. 1063, R. S.

<sup>1</sup> Allen v. U. S., 17 Wall., 207.

amount, or class described in this section, to be transmitted, with all the vouchers, papers, documents, and proofs pertaining thereto, to the said court, for trial and adjudication: *Provided*, That no case shall be referred by any head of a Department unless it belongs to one of the several classes of cases which, by reason of the subject-matter and character, the said court might, under existing laws, take jurisdiction of on such voluntary action of the claimant.

Procedure in cases transmitted by Departments.

June 25, 1868, c. 71, s. 7, v. 15, p. 76.

Sec. 1064, R. S.

**303.** All cases transmitted by the head of any Department, or upon the certificate of any Auditor or Comptroller, according to the provisions of the preceding section, shall be proceeded in as other cases pending in the Court of Claims, and shall, in all respects, be subject to the same rules and regulations.<sup>1</sup>

Judgments in cases transmitted by Departments, how paid.

June 25, 1868, c. 71, s. 7, v. 15, p. 76.

Sec. 1065, R. S.

**304.** The amount of any final judgment or decree rendered in favor of the claimant, in any case transmitted to the Court of Claims under the two preceding sections, shall be paid out of any specific appropriation applicable to the case, if any such there be; and where no such appropriation exists, the judgment or decree shall be paid in the same manner as other judgments of the said court.

Claims growing out of treaties not cognizable therein.

Mar. 3, 1863, c. 92, s. 9, v. 12, p. 767.

Sec. 1066, R. S.

**305.** The jurisdiction of the said court shall not extend to any claim against the Government not pending therein on December one, eighteen hundred and sixty-two, growing out of or dependent on any treaty stipulation entered into with foreign nations or with the Indian tribes.

Claims pending in other courts not to be prosecuted in Court of Claims.

June 25, 1868, c. 71, s. 8, v. 15, p. 77.

Sec. 1067, R. S.

**306.** No person shall file or prosecute in the Court of Claims, or in the Supreme Court on appeal therefrom, any claim for or in respect to which he or any assignee of his has pending in any other court any suit or process against any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, mediately or immediately, under the authority of the United States.

Aliens.

July 27, 1868, c. 276, s. 2, v. 15, p. 243.

Sec. 1068, R. S.

**307.** Aliens, who are citizens or subjects of any government which accords to citizens of the United States the right to prosecute claims against such government in its courts, shall have the privilege of prosecuting claims against the United States in the Court of Claims, whereof such court, by reason of their subject-matter and character, might take jurisdiction.<sup>2</sup>

Limitation.

Mar. 3, 1863, c. 92, s. 10, v. 12, p. 767.

Sec. 1069, R. S.

**308.** Every claim against the United States, cognizable by the Court of Claims, shall be forever barred unless the petition setting forth a statement thereof is filed in the court, or transmitted to it by the Secretary of the Senate

<sup>1</sup> Clyde v. U. S., 13 Wall., 38.

<sup>2</sup> U. S. v. O'Keefe, 11 Wall., 178; Carlisle v. U. S., 16 Wall., 147.

or the Clerk of the House of Representatives as provided by law, within six years after the claim first accrues: *Provided*, That the claims of married women first accrued during marriage, of persons under the age of twenty-one years first accrued during minority, and of idiots, lunatics, insane persons, and persons beyond the seas at the time the claim accrued, entitled to the claim, shall not be barred if the petition be filed in the court or transmitted, as aforesaid, within three years after the disability has ceased; but no other disability than those enumerated shall prevent any claim from being barred, nor shall any of the said disabilities operate cumulatively.

**309.** The said court shall have power to establish rules for its government and for the regulation of practice therein, and it may punish for contempt in the manner prescribed by the common law, may appoint commissioners, and may exercise such powers as are necessary to carry into effect the powers granted to it by law.

Rules of practice; contempts. Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613; Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.

Sec. 1070, R. S.

**310.** The judges and clerks of said court may administer oaths and affirmations, take acknowledgments of instruments in writing, and give certificates of the same.

Oaths and acknowledgments. Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.

Sec. 1071, R. S.

**311.** The claimant shall, in all cases, fully set forth in his petition the claim, the action thereon in Congress, or by any of the Departments, if such action has been had; what persons are owners thereof or interested therein, when and upon what consideration such persons became so interested; that no assignment or transfer of said claim, or of any part thereof or interest therein, has been made, except as stated in the petition; that said claimant is justly entitled to the amount therein claimed from the United States, after allowing all just credits and off-sets; that the claimant, and, where the claim has been assigned, the original and every prior owner thereof, if a citizen, has at all times borne true allegiance to the Government of the United States, and, whether a citizen or not, has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and that he believes the facts as stated in the said petition to be true. And the said petition shall be verified by the affidavit of the claimant, his agent, or attorney.<sup>1</sup>

Petition. Feb. 24, 1855, c. 122, s. 1, v. 10, p. 612; Mar. 3, 1863, c. 92, s. 12, v. 12, p. 767.

Sec. 1072, R. S.

**312.** The said allegations as to true allegiance and voluntary aiding, abetting, or giving encouragement to rebellion against the Government may be traversed by the Government, and if on the trial such issues shall be decided against the claimant, his petition shall be dismissed.

Petition dismissed if issue found against claimant as to allegiance, etc. Mar. 3, 1863, c. 92, s. 12, v. 12, p. 767.

Sec. 1073, R. S.

<sup>1</sup>U. S. v. Insurance Companies, 22 Wall., 99.

Burden of proof and evidence as to loyalty.

June 25, 1868, c. 71, s. 3, v. 15, p. 75.

Sec. 1074, R. S.

Commissioners to take testimony.

Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613; Mar. 3, 1863, c. 92, s. 4, v. 12, p. 765.

Sec. 1075, R. S.

Power to call upon Departments for information.

Feb. 24, 1855, c. 122, s. 11, v. 10, p. 614.

Sec. 1076, R. S.

Testimony not to be taken, when.

Feb. 24, 1855, c. 122, s. 4, v. 10, p. 613.

Sec. 1077, R. S.

Witnesses not excluded on account of color.

July 2, 1864, c. 210, s. 3, v. 13, p. 351; Mar. 2, 1867, c. 166, s. 2, v. 14, p. 457; June 25, 1868, c. 71, s. 4, v. 15, p. 75. Sec. 1078, R. S.

Examination of claimant.

Mar. 3, 1863, c. 92, s. 8, v. 12, p. 766; June 25, 1868, c. 71, s. 4, v. 15, p. 75.

Sec. 1080, R. S.

**313.** Whenever it is material in any claim to ascertain whether any person did or did not give any aid or comfort to the late rebellion, the claimant asserting the loyalty of any such person to the United States during such rebellion shall be required to prove affirmatively that such person did, during said rebellion, consistently adhere to the United States, and did give no aid or comfort to persons engaged in said rebellion; and the voluntary residence of any such person in any place where, at any time during such residence, the rebel force or organization held sway, shall be prima-facie evidence that such person did give aid and comfort to said rebellion and to the persons engaged therein.

**314.** The Court of Claims shall have power to appoint commissioners to take testimony to be used in the investigation of claims which come before it; to prescribe the fees which they shall receive for their services, and to issue commissions for the taking of such testimony, whether taken at the instance of the claimant or of the United States.

**315.** The said court shall have power to call upon any of the Departments for any information or papers it may deem necessary, and shall have the use of all recorded and printed reports made by the committees of each House of Congress, when deemed necessary in the prosecution of its business. But the head of any Department may refuse and omit to comply with any call for information or papers when, in his opinion, such compliance would be injurious to the public interest.

**316.** When it appears to the court in any case that the facts set forth in the petition of the claimant do not furnish any ground for relief, it shall not be the duty of the court to authorize the taking of any testimony therein.

**317.** No witness shall be excluded in any suit in the Court of Claims on account of color.<sup>1</sup>

**318.** The court may, at the instance of the attorney or solicitor appearing in behalf of the United States, make an order in any case pending therein, directing any claimant in such case to appear, upon reasonable notice, before any

commissioner of the court, and be examined on oath touching any or all matters pertaining to said claim. Such examination shall be reduced to writing by the said commissioner, and be returned to and filed in the court, and may, at the discretion of the attorney or solicitor of the

<sup>1</sup> Section 1073, Revised Statutes, repealed by section 8, act of March 3, 1887. (24 Stat. L., 505.) See also *Cornett v. Williams*, 20 Wall., 226; *Wood's Case*, 10 C. Cls. R., 395.

United States appearing in the case, be read and used as evidence on the trial thereof. And if any claimant, after such order is made and due and reasonable notice thereof is given to him, fails to appear, or refuses to testify or answer fully as to all matters within his knowledge material to the issue, the court may, in its discretion, order that the said cause shall not be brought forward for trial until he shall have fully complied with the order of the court in the premises.<sup>1</sup>

**319.** The testimony in cases pending before the Court of Claims shall be taken in the county where the witness resides, when the same can be conveniently done. Testimony taken where deponent resides. Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.

**320.** The Court of Claims may issue subpoenas to require the attendance of witnesses in order to be examined before any person commissioned to take testimony therein, and such subpoenas shall have the same force as if issued from a district court, and compliance therewith shall be compelled under such rules and orders as the court shall establish. Sec. 1081, R. S. Witnesses, how compelled to attend before commissioners. Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.

**321.** In taking testimony to be used in support of any claim, opportunity shall be given to the United States to file interrogatories, or by attorney to examine witnesses, under such regulations as said court shall prescribe; and like opportunity shall be afforded the claimant, in cases where testimony is taken on behalf of the United States, under like regulations. Cross-examination. Feb. 24, 1855, c. 122, s. 5, v. 10, p. 613.

**322.** The commissioner taking testimony to be used in the Court of Claims shall administer an oath or affirmation to the witnesses brought before him for examination. Witnesses, how sworn. Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.

**323.** When testimony is taken for the claimant, the fees of the commissioner before whom it is taken, and the cost of the commission and notice, shall be paid by such claimant; and when it is taken at the instance of the Government, such fees, together with all postage incurred by the Assistant Attorney-General, shall be paid out of the contingent fund provided for the Court of Claims or other appropriation made by Congress for that purpose. Sec. 1084, R. S. Fees of commissioner, by whom paid. Feb. 24, 1855, c. 122, s. 3, v. 10, p. 613.

**324.** Any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance of any claim, or of any part of any claim against the United States, shall ipso facto forfeit the same to the Government; and it shall be the duty of the Court of Claims, in such cases, to find specifically that such fraud was practiced or attempted to be practiced, and thereupon to give judgement that such Claims forfeited for fraud. Mar. 3, 1863, c. 92, s. 11, v. 12, p. 767.

Sec. 1085, R. S.

<sup>1</sup> Macauley's Case, 11 C. Cls. R., 575.



claim is forfeited to the Government, and that the claimant be forever barred from prosecuting the same.

New trial on motion of claimant.

Feb. 24, 1855, c. 122, s. 9, v. 10, p. 614.

Sec. 1087, R. S.

**325.** When judgment is rendered against any claimant, the court may grant a new trial for any reason which, by the rules of common law or chancery in suits between individuals, would furnish sufficient ground for granting a new trial.

New trial on motion of United States.

June 25, 1868, c. 71, s. 2, v. 15, p. 75.

Sec. 1088, R. S.

**326.** The Court of Claims, at any time while any claim is pending before it, or on appeal from it, or within two years next after the final disposition of such claim, may, on motion on behalf of the United States, grant a new trial and stay the payment of any judgment therein, upon such evidence, cumulative or otherwise, as shall satisfy the court that any fraud, wrong, or injustice in the premises has been done to the United States; but until an order is made staying the payment of a judgment, the same shall be payable and paid as now provided by law.<sup>1</sup>

Payment of judgments.

Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.

Sec. 1089, R. S.

**327.** In all cases of final judgments by the Court of Claims, or, on appeal, by the Supreme Court, where the same are affirmed in favor of the claimant, the sum due thereby shall be paid out of any general appropriation made by law for the payment and satisfaction of private claims, on presentation to the Secretary of the Treasury of a copy of said judgment, certified by the clerk of the Court of Claims, and signed by the chief justice, or, in his absence, by the presiding judge of said court.

Interest.

Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.

Sec. 1090, R. S.

**328.** In cases where the judgment appealed from is in favor of the claimant, and the same is affirmed by the Supreme Court, interest thereon at the rate of five per centum shall be allowed from the date of its presentation to the Secretary of the Treasury for payment as aforesaid, but no interest shall be allowed subsequent to the affirmation, unless presented for payment to the Secretary of the Treasury as aforesaid.

Interest on claims.

Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.

Sec. 1091, R. S.

**329.** No interest shall be allowed on any claim up to the time of the rendition of judgment thereon by the Court of Claims, unless upon a contract expressly stipulating for the payment of interest.

Payment of judgment a full discharge, etc.

Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.

Sec. 1092, R. S.

**330.** The payment of the amount due by any judgment of the Court of Claims and of any interest thereon allowed by law, as hereinbefore provided, shall be a full discharge to the United States of all claim and demand touching any of the matters involved in the controversy.

Final judgments a bar.

Mar. 3, 1863, c. 92, s. 7, v. 12, p. 766.

Sec. 1093, R. S.

**331.** Any final judgment against the claimant on any claim prosecuted as provided in this chapter shall forever bar any further claim or demand against the United States arising out of the matters involved in the controversy.

<sup>1</sup> Ex parte Russell, 13 Wall., 664; Ex parte, in matter of U. S., 16 Wall., 699.

**332.** Whenever a claim or matter is pending before any committee of the Senate or House of Representatives, or before either House of Congress, which involves the investigation and determination of facts, the committee or house may cause the same, with the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims of the United States, and the same shall there be proceeded in under such rules as the court may adopt. When the facts shall have been found, the court shall not enter judgment thereon, but shall report the same to the committee or to the house by which the case was transmitted for its consideration. *Sec. 1, act of March 3, 1883 (22 Stat. L., 485).*

Claims, etc., pending before Congress involving investigation to be referred to Court of Claims. *Sec. 1, Mar. 3, 1883, v. 22, p. 485.*

**333.** That when a claim or matter is pending in any of the executive departments which may involve controverted questions of fact or law, the head of such Department may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said court, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall not enter judgment thereon, but shall report its findings and opinions to the department by which it was transmitted for its guidance and action.<sup>1</sup> *Sec. 2, ibid.*

Certain claims pending in Executive Departments may be transmitted, etc., to Court of Claims. *Sec. 2, ibid.*

**334.** The jurisdiction of said court shall not extend to or include any claim against the United States growing out of the destruction or damage to property by the Army or Navy during the war for the suppression of the rebellion, or for the use and occupation of real estate by any part of the military or naval forces of the United States in the operations of said forces during the said war at the seat of war; nor shall the said court have jurisdiction of any claim against the United States which is now barred by virtue of the provisions of any law of the United States. *Sec. 3, ibid.*

Claims not within jurisdiction of court. *Sec. 3, ibid.*

**335.** In any case of a claim for supplies or stores taken by or furnished to any part of military or naval forces of the United States for their use during the late war for the suppression of the rebellion, the petition shall aver that the person who furnished such supplies or stores, or from whom such supplies or stores were taken, did not give any aid or comfort to said rebellion, but was throughout that war loyal to the government of the United States, and the fact of such loyalty shall be a jurisdictional fact; and unless the said court shall, on a preliminary inquiry, find that

Claims for supplies, etc., furnished for suppression of the rebellion. *Sec. 4, ibid.*

Loyalty to be a jurisdictional fact.

<sup>1</sup>Where claims are referred by the head of an Executive Department, of his own motion, and without the consent of the claimant, the court will take jurisdiction under the Bowman Act. *Billings v. U. S., 23 C. Cls. R., 166, 175.*

the person who furnished such supplies or stores, or from whom the same were taken as aforesaid, was loyal to the Government of the United States throughout said war, the court shall not have jurisdiction of such cause, and the same shall, without further proceedings, be dismissed. *Sec. 4, ibid.*

Defense, etc.,  
for the United  
States.  
*Sec. 5, ibid.*

**336.** That the Attorney-General or his assistants, under his direction, shall appear for the defense and protection of the interests of the United States in all cases which may be transmitted to the Court of Claims under this act, with the same power to interpose counter-claims, offsets, defenses for fraud practiced or attempted to be practiced by claimants, and other defenses, in like manner as he is now required to defend the United States in said court. *Sec. 5, ibid.*

Parties in in-  
terest may tes-  
tify, etc.  
*Sec. 6, ibid.*

**337.** That in the trial of such cases no person shall be excluded as a witness because he or she is a party to or interested in the same. *Sec. 6, ibid.*

Reports of  
Court of Claims  
may be contin-  
ued, etc., for ac-  
tion.  
*Sec. 7, ibid.*

**338.** That reports of the Court of Claims to Congress under this act, if not finally acted upon during the session at which they are reported, shall be continued from session to session and from Congress to Congress until the same shall be finally acted upon.<sup>1</sup> *Sec. 7, ibid.*

Suits against  
the Government.

**339.** That the Court of Claims shall have jurisdiction to hear and determine the following matters:

Jurisdiction of  
Court of Claims.  
R. S., sec. 1058,  
p. 195.  
Mar. 3, 1887, v.  
24, p. 505.

First. All claims founded upon the Constitution of the United States<sup>2</sup> or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort, in respect of which claims the party would be entitled to redress against the United States either in a court of law, equity, or admiralty if the United States were suable: *Provided, however,* That nothing in this section shall be construed as giving to either of the courts herein mentioned, jurisdiction to hear and determine claims growing out of the late civil war, and commonly known as "war claims," or to hear and determine other claims, which have heretofore been

*Proviso.*

"War" and re-  
jected claims ex-  
cepted.

<sup>1</sup> Paragraphs 332 to 338, inclusive, constitute the Bowman Act (22 Stat. L., 485).

<sup>2</sup> The clause giving the Court of Claims jurisdiction of claims founded upon the Constitution of the United States gives the court jurisdiction over obligations arising out of the occupation or taking of real property. *Stovall v. U. S.*, 26 C. Cls. R., 226. A distinction exists between property used for Government purposes and property destroyed for the public safety. If the conditions admitted of it being acquired by contract and used for the benefit of the Government, it may be regarded as acquired under an implied contract; but if the taking, using, or occupying was in the nature of destruction for the general welfare, or incident to the ravages of war, and whether brought about by casualty or by authority, and whether on hostile or national territory, the loss (in the absence of positive legislation) must be borne by him upon whom it falls. *Hefleblower v. U. S.*, 21 C. Cls. R., 228.

rejected, or reported on adversely by any court, Department, or commission authorized to hear and determine the same.

Second. All set-offs, counter-claims, claims for damages, whether liquidated or unliquidated, or other demands whatsoever on the part of the Government of the United States against any claimant against the Government in said court: *Provided*, That no suit against the Government of the United States, shall be allowed under this act unless the same shall have been brought within six years after the right accrued for which the claim is made. *Act of March 3, 1887, v. 24, p. 505.*

Set-offs, counter-claims, etc.

*Proviso.*  
Limitation.

340. That the district courts of the United States shall have concurrent jurisdiction with the Court of Claims as to all matters named in the preceding section where the amount of the claim does not exceed one thousand dollars, and the circuit courts of the United States shall have such concurrent jurisdiction in all cases where the amount of such claim exceeds one thousand dollars and does not exceed ten thousand dollars. All causes brought and tried under the provisions of this act shall be tried by the court without a jury. *Sec. 2, ibid.*

District and circuit courts to have concurrent jurisdiction with Court of Claims; limit.  
*Sec. 2, ibid.*

341. That whenever any person shall present his petition to the Court of Claims alleging that he is or has been indebted to the United States as an officer or agent thereof, or by virtue of any contract therewith, or that he is the guarantor, or surety, or personal representative of any officer, or agent, or contractor so indebted, or that he, or the person for whom he is such surety, guarantor, or personal representative has held any office or agency under the United States, or entered into any contract therewith, under which it may be or has been claimed that an indebtedness to the United States has arisen and exists, and that he or the person he represents has applied to the proper Department of the Government requesting that the account of such office, agency, or indebtedness may be adjusted and settled, and that three years have elapsed from the date of such application and said account still remains unsettled and unadjusted, and that no suit upon the same has been brought by the United States, said court shall, due notice first being given to the head of said Department and to the Attorney-General of the United States, proceed to hear the parties and to ascertain the amount, if any, due the United States on said account. The Attorney-General shall represent the United States at the hearing of said cause. The court may postpone the same from

Petitions for release from official bond.  
*Sec. 3, ibid.*

- Judgment.** time to time whenever justice shall require. The judgment of said court or of the Supreme Court of the United States, to which an appeal shall lie, as in other cases, as to the amount due, shall be binding and conclusive upon the parties. The payment of such amount so found due by the court shall discharge such obligation. An action shall accrue to the United States against such principal, or surety, or representative to recover the amount so found due, which may be brought at any time within three years after the final judgment of said court. Unless suit shall be brought within said time, such claim and the claim on the original indebtedness shall be forever barred. *Sec. 3, ibid.*
- Limitation.**
- Jurisdiction and procedure.** *Sec. 4, ibid.* **342.** That the jurisdiction of the respective courts of the United States proceeding under this act, including the right of exception and appeal, shall be governed by the law now in force, in so far as the same is applicable and not inconsistent with the provisions of this act; and the course of procedure shall be in accordance with the established rules of said respective courts, and of such additions and modifications thereof as said courts may adopt. *Sec. 4, ibid.*
- Petition for settlement of claims.** *Sec. 5, ibid.* **343.** That the plaintiff in any suit brought under the provisions of the second section of this act shall file a petition, duly verified with the clerk of the respective court having jurisdiction of the case, and in the district where the plaintiff resides. Such petition shall set forth the full name and residence of the plaintiff, the nature of his claim, and a succinct statement of the facts upon which the claim is based, the money or any other thing claimed, or the damages sought to be recovered and praying the court for a judgment or decree upon the facts and law. *Sec. 5, ibid.*
- Service.** *Sec. 6, ibid.* **344.** That the plaintiff shall cause a copy of his petition filed under the preceding section to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail a copy of the same, by registered letter, to the Attorney-General of the United States, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letter. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Government in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case to file a plea, answer, or demurrer on the part of the Government, and to file a notice of any counter-claim, set-off, claim for damages, or other demand or defense whatsoever of the Government
- Defense.**

in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court. *Sec. 6, ibid.*

*Proviso.*  
Proceedings on  
failure of Gov-  
ernment to an-  
swer.

345. That it shall be the duty of the court to cause a written opinion to be filed in the cause, setting forth the specific findings by the court of the facts therein and the conclusions of the court upon all questions of law involved in the case, and to render judgment thereon. If the suit be in equity or admiralty, the court shall proceed with the same according to the rules of such courts. *Sec. 7, ibid.*

Opinions.  
*Sec. 7, ibid.*

346. That in the trial of any suit brought under any of the provisions of this act, no person shall be excluded as a witness because he is a party to or interested in said suit; and any plaintiff or party in interest may be examined as a witness on the part of the Government.

Interested parties may testify.  
*Sec. 8, ibid.*

Section ten hundred and seventy-nine of the Revised Statutes is hereby repealed. The provisions of section ten hundred and eighty of the Revised Statutes shall apply to cases under this act. *Sec. 8, ibid.*

347. That the plaintiff or the United States, in any suit brought under the provisions of this act shall have the same rights of appeal or writ of error as are now reserved in the statutes of the United States in that behalf made, and upon the conditions and limitations therein contained. The modes of procedure in claiming and perfecting an appeal or writ of error shall conform in all respects, and as near as may be, to the statutes and rules of court governing appeals and writs of error in like causes. *Sec. 9, ibid.*

Appeals and  
writs of error.  
*Sec. 9, ibid.*

348. That when the findings of fact and the law applicable thereto have been filed in any case as provided in section six of this act, and the judgment or decree is adverse to the Government, it shall be the duty of the district attorney to transmit to the Attorney-General of the United States certified copies of all the papers filed in the cause, with a transcript of the testimony taken, the written findings of the court, and his written opinion as to the same; whereupon the Attorney-General shall determine and direct whether an appeal or writ of error shall be taken or not; and when so directed the district attorney shall cause an appeal or writ of error to be perfected in accordance with the terms of the statutes and rules of practice governing the same: *Provided*, That no appeal or writ of error shall

Procedure.

Adverse judgments to United States to be certified to Attorney-General.  
*Sec. 10, ibid.*

Appeal.

*Proviso.*

- Limitation. be allowed after six months from the judgment or decree in such suit. From the date of such final judgment or
- Interest. decree interest shall be computed thereon, at the rate of four per centum per annum, until the time when an appropriation is made for the payment of the judgment or decree. *Sec. 10, ibid.*
- Report to Congress. **349.** That the Attorney-General shall report to Congress, and at the beginning of each session of Congress, the suits under this act in which a final judgment or decree has been rendered giving the date of each, and a statement of the costs taxed in each case. *Sec. 11, ibid.*
- Claims referred by Departments. **350.** That when any claim or matter may be pending in any of the Executive Departments which involves controverted questions of fact or law, the head of such Department, with the consent of the claimant, may transmit the same, with the vouchers, papers, proofs, and documents pertaining thereto, to said Court of Claims, and the same shall be there proceeded in under such rules as the court may adopt. When the facts and conclusions of law shall have been found, the court shall report its findings to the Department by which it was transmitted.<sup>1</sup> *Sec. 12, ibid.*
- Claims referred under Bowman Act. **351.** That in every case which shall come before the Court of Claims, or is now pending therein, under the provisions of an act entitled "An act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands against the Government," approved March third, eighteen hundred and eighty-three, if it shall appear to the satisfaction of the court, upon the facts established, that it has jurisdiction to render judgment or decree thereon under existing laws or under the provisions of this act, it shall proceed to do so, giving to either party such further opportunity for hearing as in its judgment justice shall require, and report its proceedings therein to either House of Congress or to the Department by which the same was referred to said court. *Sec. 13, ibid.*
- Judgment. **352.** That whenever any bill, except for a pension, shall be pending in either House of Congress providing for the payment of a claim against the United States, legal or equitable, or for a grant, gift, or bounty to any person, the House in which such bill is pending may refer the same to the Court of Claims, who shall proceed with the same in accordance with the provisions of the act approved March third, eighteen hundred and eighty-three, entitled an "Act to afford assistance and relief to Congress and the Executive Departments in the investigation of claims and demands
- Reference of claims pending in Congress. *Sec. 14, ibid.*

<sup>1</sup> See paragraph 333 *supra* (section 3, act of March 3, 1883).

against the Government," and report to such House the facts in the case and the amount, where the same can be liquidated, including any facts bearing upon the question whether there has been delay or laches in presenting such claim or applying for such grant, gift, or bounty, and any facts bearing upon the question whether the bar of any statute of limitation should be removed or which shall be claimed to excuse the claimant for not having resorted to any established legal remedy. *Sec. 14, ibid.*

**353.** If the Government of the United States shall put in issue the right of the plaintiff to recover the court may, in its discretion, allow costs to the prevailing party from the time of joining such issue. Such costs, however, shall include only what is actually incurred for witnesses, and for summoning the same, and fees paid to the clerk of the court.<sup>1</sup>  
*Sec. 15, ibid.*

Costs.  
*Sec. 15, ibid.*

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<sup>1</sup>Vol. 24, Stat. L., pp. 505-508. paragraphs 339 to 353, *supra*, constitute the Tucker Act. The act of March 3, 1891 (29 Stat. L., 851), confers jurisdiction upon this court to adjust certain claims arising from Indian depredations.



## CHAPTER VIII.

### THE DEPARTMENT OF THE NAVY—THE MARINE CORPS.

Par.	Par.
354. Establishment of the Navy Department.	365. Duty on shore.
355. Composition of Marine Corps.	366. Regulations.
356. Credit for volunteer service.	367. Subject to laws governing the Navy, except when serving with the Army.
357. Rank of commandant.	368. Retirement of officers.
358. Relative rank with the Army.	369. Retiring board, composition.
359. Brevets.	370. Transfers from military to naval service.
360. Enlistments.	371. Officers of the Navy may be detailed for service of the War Department.
361. Oath.	
362. Exemption from arrest.	
363. Companies and detachments.	
364. Pay of Marine Corps.	

Establishment of the Department of the Navy.  
Apr. 30, 1798, v. 1, p. 553.

**354.** There shall be at the seat of Government an Executive Department to be known as the Department of the Navy, and a Secretary of the Navy, who shall be the head thereof.

Sec. 415, R. S.

#### THE MARINE CORPS.

Composition of Marine Corps.  
July 25, 1861, c. 19, s. 1, v. 12, p. 275; Mar. 2, 1867, c. 174, s. 7, v. 14, p. 517; June 3, 1874, v. 185, p. 58; June 30, 1876, v. 19, p. 71.

Sec. 1596, R. S.

**355.** The Marine Corps of the United States shall consist of one commandant, with the rank of colonel, one colonel, two lieutenant-colonels, four majors, one adjutant and inspector, one paymaster, one quartermaster, two assistant quartermasters, twenty captains, thirty first lieutenants, thirty second lieutenants, one sergeant-major, one quartermaster-sergeant, one drum-major, one principal musician, two hundred sergeants, two hundred and twenty corporals, thirty musicians for a band, sixty drummers, sixty fifers, and twenty-five hundred privates.<sup>1</sup>

Credit for volunteer service.  
Mar. 2, 1867, c. 174, s. 3, v. 14, p. 516.

Sec. 1600, R. S.  
Rank of commandant.

Mar. 2, 1867, c. 174, s. 7, v. 14, p. 517; June 6, 1874, v. 18, p. 58.

**356.** All marine officers shall be credited with the length of time they may have been employed as officers or enlisted men in the volunteer service of the United States.

**357.** The commandant of the Marine Corps shall have the rank of a colonel of the Army.

<sup>1</sup> The commissioned strength of the Marine Corps was fixed at seventy-five by the act of June 30, 1876 (19 Stat. L., 71).

**358.** The officers of the Marine Corps shall be, in relation to rank, on the same footing as officers of similar grades in the Army.

Relative rank with the Army.  
June 30, 1834, c. 132, s. 4, v. 4, p. 713. Sec. 1603, R. S.

**359.** Commissions by brevet may be conferred upon commissioned officers of the Marine Corps in the same cases, upon the same conditions, and in the same manner as are or may be provided by law for officers of the Army.

Brevets.  
Apr. 16, 1814, c. 58, s. 3, v. 3, p. 124;  
Apr. 16, 1818, c. 64, s. 2, v. 3, p. 427;  
June 30, 1834, c. 132, s. 9, v. 4, p. 15, p. 281; Mar. 3, 1869, c. 124, s. 7, v. 15, p. 318; July 15, 1870, c. 294, s. 16, v. 16, p. 319. Sec. 1604, R. S.

**360.** Enlistments into the Marine Corps shall be for a period not less than five years.

Enlistments.  
July 11, 1870, Res. 106, v. 16, p. 387. Sec. 1608, R. S.

**361.** The officers and enlisted men of the Marine Corps shall take the same oaths, respectively, which are provided by law for the officers and enlisted men of the Army.

Oath.  
July 11, 1798, c. 72, s. 4, v. 1, p. 595. Sec. 1609, R. S.

**362.** Marines shall be exempt, while enlisted in said service, from all personal arrest for debt or contract.

Exemption from arrest.  
July 11, 1798, c. 72, s. 4, v. 1, p. 595. Sec. 1610, R. S.

**363.** The Marine Corps may be formed into as many companies or detachments as the President may direct, with a proper distribution of the commissioned and non-commissioned officers and musicians to each company or detachment.

Companies and detachments.  
July 11, 1798, c. 72, s. 1, v. 1, p. 594. Sec. 1611, R. S.

**364.** The officers of the Marine Corps shall be entitled to receive the same pay and allowances, and the enlisted men shall be entitled to receive the same pay and bounty for re-enlisting, as are or may be provided by or in pursuance of law for the officers and enlisted men of like grades in the infantry of the Army.

Pay of Marine Corps.  
June 30, 1834, c. 132, s. 5, v. 4, p. 713; Aug. 5, 1854, c. 268, s. 1, v. 10, p. 586. Sec. 1612, R. S.

**365.** The Marine Corps shall be liable to do duty in the forts and garrisons of the United States, on the seacoast, or any other duty on shore, as the President, at his discretion, may direct.

Duty on shore.  
July 11, 1798, c. 72, s. 6, v. 1, p. 596. Sec. 1619, R. S.

**366.** The President is authorized to prescribe such military regulations for the discipline of the Marine Corps as he may deem expedient.

Regulations.  
June 30, 1834, c. 132, s. 8, v. 4, p. 713. Sec. 1620, R. S.

**367.** The Marine Corps shall, at all times, be subject to the laws and regulations established for the government of the Navy, except when detached for service with the Army by order of the President; and when so detached they shall be subject to the rules and articles of war prescribed for the government of the Army.

Subject to laws governing the Navy, except when serving with the Army.  
June 30, 1834, c. 132, s. 2, v. 4, p. 713; July 11, 1798, c. 72, s. 4, v. 1, p. 595. Sec. 1621, R. S.

**368.** The commissioned officers of the Marine Corps shall be retired in like cases, in the same manner, and with the same relative conditions, in all respects, as are provided for officers of the Army, except as is otherwise provided in the next section.

Retirement of officers.  
Aug. 3, 1861, c. 42, ss. 15, 16, 17, v. 12, p. 289; July 17, 1862, c. 200, s. 12, v. 12, p. 596; Jan. 21, 1870, c. 9, s. 1, v. 16, p. 62; July 15, 1870, c. 294, s. 4, v. 16, p. 317; June 10, 1872, c. 419, s. 1, v. 17, p. 378. Sec. 1622, R. S.

Retiring board,  
composition.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
289.

**369.** In case of an officer of the Marine Corps, the retiring board shall be selected by the Secretary of the Navy, under the direction of the President. Two-fifths of the

**Sec. 1623, R. S.** board shall be selected from the Medical Corps of the Navy and the remainder shall be selected from officers of the Marine Corps, senior in rank, so far as may be, to the officer, whose disability is to be inquired of.

#### TRANSFERS.

Transfers from  
military to naval  
service.

July 1, 1864, c.  
201, s. 1, v. 13, p.  
342.

**Sec. 1421, R. S.**

**370.** Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of the military law.

#### DETAILS OF NAVAL OFFICERS.

Officers of the  
Navy may be de-  
tailed for service  
of the War De-  
partment.

Feb. 12, 1862, c.  
21, v. 12, p. 333.

**Sec. 1437, R. S.**

**371.** The President may detail, temporarily, three competent naval officers for the service of the War Department in the inspection of transport vessels, and for such other services as may be designated by the Secretary of War.

## CHAPTER IX.

### THE DEPARTMENT OF THE INTERIOR.

Par.		Par.	
372. Establishment of Department of the Interior.		373. Duties of Secretary.	
		374. Powers of Secretary.	
<p><b>372.</b> There shall be at the seat of Government an Executive Department to be known as the Department of the Interior, and a Secretary of the Interior, who shall be the head thereof.</p>			
<p><b>373.</b> The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:</p>			
<p>First. The census; when directed by law.</p>			
<p>Second. The public lands, including mines.</p>			
<p>Third. The Indians.</p>			
<p>Fourth. Pensions and bounty lands.</p>			
<p>Fifth. Patents for inventions.</p>			
<p>Sixth. The custody and distribution of publications.</p>			
<p>Seventh. Education.</p>			
<p>Eighth. Government Hospital for the Insane.</p>			
<p>Ninth. Columbia Asylum for the Deaf and Dumb.</p>			
<p><b>374.</b> The Secretary of the Interior shall hereafter exercise all the powers and perform all the duties in relation to the Territories of the United States that were, prior to March first, eighteen hundred and seventy-three, by law or by custom exercised and performed by the Secretary of State.</p>			

Establishment of Department of the Interior.  
Mar. 3, 1849, c. 108, s. 1, v. 9, p. 395.

Sec. 437, R. S.  
Duties of Secretary.  
Mar. 3, 1849, c. 108, ss. 3, 5, 6, 7, 8, v. 9, p. 395;  
July 8, 1870, c. 230, s. 1, v. 16, p. 198;  
Feb. 5, 1859, c. 22, s. 1, v. 11, p. 379;  
July 20, 1868, c. 176, s. 1, v. 15, pp. 92, 106.

Sec. 441, R. S.

Powers of Secretary.  
Mar. 1, 1873, c. 217, v. 17, p. 484.

Sec. 442, R. S.

### THE GENERAL LAND-OFFICE.

Par.		Par.	
375. Commissioner of the General Land-Office.		378. Returns and accounts relative to lands.	
376. Secretary to the President to sign land patents.		379. Warrants for military lands.	
377. Duties of Commissioner.		380. Issue of patents for lands.	

Commissioner of the General Land-Office.

Apr. 25, 1812, c. 68, s. 11, v. 2, p. 717; July 4, 1836, c. 352, s. 1, v. 5, p. 107; Mar. 3, 1873, c. 226, s. 3, v. 17, p. 508.

**375.** There shall be in the Department of the Interior a Commissioner of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand dollars a year.

Sec. 446, R. S.

Secretary to the President to sign land patents.

July 4, 1836, c. 352, s. 6, v. 5, p. 111.

**376.** The President is authorized to appoint, from time to time, by and with the advice and consent of the Senate, a secretary, at a salary of one thousand five hundred dollars a year, whose duty it shall be, under the direction of the

President, to sign in his name, and for him, all patents for land sold or granted under the authority of the United States.

Sec. 450, R. S.

Duties of Commissioner.

Apr. 25, 1812, c. 68, s. 1, v. 2, p. 717; July 4, 1836, c. 352, s. 1, v. 5, p. 107; 18 Stat. L., p. 313.

**377.** The Commissioner of the General Land-Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government.<sup>1</sup>

Sec. 453, R. S.

Returns and accounts relative to lands.

Apr. 25, 1812, c. 68, s. 9, v. 2, p. 717.

**378.** All returns relative to the public lands shall be made to the Commissioner of the General Land-Office, and he shall have power to audit and settle all public accounts relative to the public lands; and upon the settlement of any such account, he shall certify the balance, and transmit the account with the vouchers and certificate to the First Comptroller of the Treasury, for his examination and decision thereon.

Sec. 456, R. S.

Warrants for military lands.

Apr. 25, 1812, c. 68, s. 7, v. 2, p. 717.

**379.** In all cases in which land has heretofore or shall hereafter be given by the United States for military services, warrants shall be granted to the parties entitled to such land by the Secretary of the Interior; and such warrants shall be recorded in the General Land-Office, in books to be kept for the purpose, and shall be located as is or may be provided by law; and patents shall afterwards be issued accordingly.

Sec. 457, R. S.

Issue of patents for lands.

Apr. 25, 1812, c. 68, s. 8, v. 2, p. 717; Mar. 3, 1841, c. 26, s. 2, v. 5, p. 417.

**380.** All patents issuing from the General Land-Office shall be issued in the name of the United States, and be signed by the President and countersigned by the Recorder of the General Land-Office; and shall be recorded in the Office, in books to be kept for the purpose.<sup>2</sup>

Sec. 458, R. S.

<sup>1</sup> The Court of Private Land Claims, established by the act of March 3, 1891 (26 Stat. L., 854-862), has been given jurisdiction to hear and determine controversies as to titles to lands situated in the territory acquired from Mexico, by virtue of Spanish and Mexican grants; and to issue decrees which shall finally settle and determine the validity of such titles and the boundaries of claims presented for adjudication. The powers of the court are to cease and determine on December 31, 1897. Act March 2, 1895 (18 Stat. L., 805). See also *Barnard's Heirs v. Ashley's Heirs et al.*, 18 How., 43; *Bell v. Hearne et al.*, 19 How., 252; *Maguire v. Tyler*, 1 Black, 195.

<sup>2</sup> Section 3 of the act of March 2, 1895, authorizes the patents for public lands to be engrossed and recorded by means of typewriters or other machines, under regulations to be prescribed by the Secretary of the Interior, with the approval of the President. (28 Stat. L., 807.)

## THE COMMISSIONER OF INDIAN AFFAIRS.

Par.	Par.
381. Commissioner of Indian Affairs.	385. Presentation and payment of claims for Indian depredations.
382. Duties of Commissioner.	386. Sale of arms, etc., to Indians prohibited.
383. Accounts for claims and disbursements.	387. Commissioner to report annually to Congress.
384. Regulations relating to Indian affairs.	388. Reports of Indian supplies.

**381.** There shall be in the Department of the Interior a Commissioner of Indian Affairs, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be entitled to a salary of three thousand dollars a year.<sup>1</sup>

Commissioner of Indian Affairs.  
July 9, 1832, c. 174, s. 1, v. 4, p. 564.

Sec. 462, R. S.

**382.** The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs, and of all matters arising out of Indian relations.

Duties of Commissioner.  
July 9, 1832, c. 174, s. 1, v. 4, p. 564; July 27, 1868, c. 259, s. 1, v. 15, p. 228.

Sec. 463, R. S.

**383.** All accounts and vouchers for claims and disbursements connected with Indian affairs shall be transmitted to the Commissioner for administrative examination, and by him passed to the proper accounting officer of the Department of the Treasury for settlement.

Accounts for claims and disbursements.  
July 9, 1832, c. 174, s. 3, v. 4, p. 564.

Sec. 464, R. S.

**384.** The President may prescribe such regulations as he may think fit for carrying into effect the various provisions of any act relating to Indian affairs, and for the settlement of the accounts of Indian affairs.

Regulations relating to Indian affairs.  
June 30, 1834, c. 162, s. 17, v. 4, p. 738.

Sec. 465, R. S.

**385.** The Secretary of the Interior shall prepare and cause to be published such regulations as he may deem proper, prescribing the manner of presenting claims arising under laws or treaty stipulations, for compensation for depredations committed by the Indians, and the degree and character of the evidence necessary to support such claims; he shall carefully investigate all such claims as may be presented, subject to the regulations prepared by him; and no payment on account of any such claims shall be made without a specific appropriation therefor by Congress.

Presentation and payment of claims for Indian depredations.  
May 29, 1872, c. 233, s. 7, v. 17, p. 190.

Sec. 466, R. S.

**386.** The Secretary of the Interior shall adopt such rules as may be necessary to prohibit the sale of arms or ammunition within any district or country occupied by uncivilized or hostile Indians, and shall enforce the same.

Sale of arms, etc., to Indians prohibited.  
Feb. 14, 1873, c. 138, s. 1, v. 17, p. 457.

Sec. 467, R. S.

<sup>1</sup>For other statutory provisions respecting Indians, Indian affairs, and the Indian country see the chapter entitled INDIANS, INDIAN AGENTS, ETC.



Commissioner  
to report annual-  
ly to Congress.

Mar. 2, 1867, c.  
173, s. 3, v. 14, p.  
515.

Sec. 468, R. S.

**387.** The Commissioner of Indian Affairs shall annually report, separately, to Congress, a tabular statement showing distinctly the separate objects of expenditure under his supervision, and how much disbursed for each object, describing the articles and the quantity of each, and giving the name of each person to whom any part was paid, and how much was paid to him, and for what objects, so far as they relate to the disbursement of the funds appropriated for the incidental, contingent, or miscellaneous expenses of the Indian service, during the fiscal year next preceding each report. (*See secs. 195, 196, R. S.*)

Reports of In-  
dian supplies.

Feb. 14, 1873, c.  
138, s. 7, v. 17, p.  
463.

Sec. 469, R. S.

**388.** The Commissioner of Indian Affairs shall embody in his annual report the reports of all agents or commissioners issuing food, clothing, or supplies of any kind to Indians, stating the number of Indians present and actually receiving the same.

#### THE COMMISSIONER OF PENSIONS.<sup>1</sup>

Par.

389. Commissioner of Pensions.

Par.

390. Duties of the Commissioner.

Commissioner  
of Pensions.

Mar. 2, 1833, c.  
54, s. 1, v. 4, pp.  
619, 622; Mar. 3,  
1835, c. 46, ss. 1, 2,  
3, v. 4, p. 779; Mar.  
3, 1837, c. 43, v. 5,  
p. 187; Mar. 4,  
1840, c. 4, ss. 1, 2,  
3, v. 5, p. 369; Mar. 4, 1840, c. 4, s. 4, v. 5, p. 370; Jan. 20, 1843, c. 4, v. 5, p. 597; Jan. 14, 1846, c. 4, s. 1, v. 9, p. 3; Jan. 19, 1849, c. 20, s. 1, v. 9, p. 341; Mar. 3, 1873, c. 226, s. 3, v. 17, p. 508. Sec. 470, R. S.

**389.** There shall be in the Department of the Interior a Commissioner of Pensions, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to receive a salary of four thousand dollars a year.

Duties of the  
Commissioner.

Mar. 2, 1833, c.  
54, s. 1, v. 4, pp.  
619, 622; Mar. 3,  
1835, c. 46, s. 2, v.  
4, p. 779; Mar. 3,  
1837, c. 43, s. 2, v.  
5, p. 187; Mar. 4, 1840, c. 4, s. 2, v. 5, p. 369; Mar. 4, 1840, c. 4, s. 4, v. 5, p. 370; Jan. 20, 1843, c. 4, s. 2, v. 5, p. 597; Jan. 19, 1877, c. 27, v. 19, p. 224. Sec. 471, R. S.

**390.** The Commissioner of Pensions shall perform, under the direction of the Secretary of the Interior, such duties in the execution of the various pension and bounty-land laws as may be prescribed by the President.

#### THE RETURNS OFFICE.<sup>2</sup>

Par.

391. Returns Office.

392. Clerk to file returns.

Par.

393. Indexes.

394. Copies of returns.

Returns Office.  
June 2, 1862, c.  
93, s. 4, v. 2, p. 412.

Sec. 512, R. S.

**391.** The Secretary of the Interior shall from time to time provide a proper apartment, to be called the Returns Office, in which he shall cause to be filed the returns of contracts made by the Secretary of War, the Secretary of the Navy, and the Secretary of the Interior, and shall appoint a clerk of the first class to attend to the same. (*See secs. 3744-3747, R. S., paragraphs 1189-1192 post.*)

<sup>1</sup> See chapter entitled PENSIONS for laws regulating the granting of pensions.

<sup>2</sup> See chapter entitled CONTRACTS AND PURCHASES for other statutes relating to the filing of contracts and other papers in the Returns Office.

**392.** The clerk of the Returns Office shall file all returns made to the office, so that the same may be of easy access, keeping all returns made by the same officer in the same place, and numbering them in the order in which they are made.

Clerk to file returns.  
June 2, 1862, c. 93, s. 4, v. 12, p. 412.

Sec. 513, R. S.

**393.** The clerk of the Returns Office shall provide and keep an index-book, with the names of the contracting parties, and the number of each contract opposite to the names; and shall submit the index-book and returns to any person desiring to inspect it.

Indexes.  
June 2, 1862, c. 93, s. 4, v. 12, p. 412.

Sec. 514, R. S.

**394.** The clerk of the Returns Office shall furnish copies of such returns to any person paying therefor at the rate of five cents for every one hundred words, to which copies certificates shall be appended in every case by the clerk making the same, attesting their correctness, and that each copy so certified is a full and complete copy of the return.

Copies of returns.  
June 2, 1862, c. 93, s. 4, v. 12, p. 412.

Sec. 515, R. S.



## CHAPTER X.

### THE REVISED STATUTES<sup>1</sup>—THE STATUTES AT LARGE — THE ARMY REGULATIONS — THE ARMY REGISTER.

#### THE REVISED STATUTES.

Par.		Par.	
395.	Commissioners to revise and consolidate the general statutes of the United States.	412.	Commissioner to prepare new edition of Revised Statutes.
396.	Duties of the commissioners.	413.	Duty of Commissioner. Amendments. References. Revision of indexes.
397.	Work to be submitted to Congress.	414.	Additional matter to be included.
398.	Work may be printed in parts.	415.	When to be completed. To be legal evidence.
399.	Revision to be completed as soon as practicable.	416.	New edition of Revised Statutes to be prima facie evidence.
400.	Compensation.	417.	Supplement to Revised Statutes.
401.	Preparation of Revised Statutes for printing. Headnotes. Marginal references. References to judicial decisions. Index.	418.	Editing and preparing Supplement.
402.	Printed copies to be evidence.	419.	To be prima facie evidence.
403.	Title of revision of statutes.	420.	Supplement of 1891 to Revised Statutes. (Vol. I.)
404.	Certificate to Revised Statutes.	421.	Distribution of supplement of 1891.
405.	Scope of Revised Statutes.	422.	To be prima facie evidence.
406.	Repeal of acts embraced in revision.	423.	Supplement of 1895. (Vol. II.)
407.	Accrued rights reserved.	424.	Statutes at Large.
408.	Prosecutions and punishments.	425.	Printing and binding.
409.	Acts of limitation.	426.	Distribution of pamphlet copies of acts of each session.
410.	Arrangement and classification of sections.	427.	Preparation of laws of each Congress.
411.	Acts passed since December 1, 1873, not affected.	428.	Printed copies to be legal evidence.

<sup>1</sup> The Revised Statutes must be accepted as the law on the subjects which they embrace as it existed on the first day of December, 1873, and were enacted to present the entire body of the laws in a concise and compact form. When the language of the Revised Statutes is plain and unambiguous, the grammatical structure simple and accurate, and the meaning of the whole intelligible and obvious, a court is not at liberty, by construction, to reproduce the law as it stood before the revision. *U. S. v. Bowen*, 100 U. S., 508. See also *Wright v. U. S.*, 15 C. Cls. R., 80, 86.

**395.** That the President of the United States be, and he is hereby, authorized, by and with the advice and consent of the Senate, to appoint three persons, learned in the law, as commissioners, to revise, simplify, arrange, and consolidate all statutes of the United States, general and permanent in their nature, which shall be in force at the time such commissioners may make the final report of their doings. *Act of June 27, 1866 (14 Stat. L., 74).*

Commissioners to revise and consolidate the general statutes of the United States.  
June 27, 1866, v. 14, p. 74.

**396.** That, in performing this duty, the commissioners shall bring together all statutes and parts of statutes which, from similarity of subject, ought to be brought together, omitting redundant or obsolete enactments, and making such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the original text; and they shall arrange the same under titles, chapters, and sections, or other suitable divisions and subdivisions, with head-notes briefly expressive of the matter contained in such divisions; also with side-notes, so drawn as to point to the contents of the text, and with references to the original text from which each section is compiled, and to the decisions of the Federal courts, explaining or expounding the same, and also to such decisions of the State courts as they may deem expedient; and they shall provide by a temporary index, or other expedient means, for an easy reference to every portion of their report. *Sec. 2, ibid.*

Duties of the commissioners.  
Sec. 2, *ibid.*

**397.** That when the commissioners have completed the revision and consolidation of the statutes, as aforesaid, they shall cause a copy of the same, in print, to be submitted to Congress, that the statutes so revised and consolidated may be re-enacted, if Congress shall so determine; and at the same time they shall also suggest to Congress such contradictions, omissions, and imperfections as may appear in the original text, with the mode in which they have reconciled, supplied, and amended the same; and they may also designate such statutes or parts of statutes as, in their judgment, ought to be repealed, with their reasons for such repeal. *Sec. 3, ibid.*

Work to be submitted to Congress.  
Sec. 3, *ibid.*

**398.** That the commissioners shall be authorized to cause their work to be printed in parts, so fast as it may be ready for the press, and to distribute copies of the same to members of Congress, and to such other persons, in limited numbers, as they may see fit, for the purpose of obtaining their suggestions; and they shall, from time to time, report to Congress their progress and doings. *Sec. 4, ibid.*

Work may be printed in parts.  
Sec. 4, *ibid.*

**399.** That the statutes so revised and consolidated shall be reported to Congress as soon as practicable, and the whole work closed without unnecessary delay. *Sec. 5, ibid.*

Revision to be completed as soon as practicable.  
Sec. 5, *ibid.*

Compensation.  
Sec. 6, *ibid.*

400. That the commissioners shall each receive as compensation for his services at the rate of five thousand dollars a year for three years, with the reasonable expenses of clerical service and other incidental matters, not to exceed two thousand dollars annually for such expenses.<sup>1</sup>  
*Sec. 6, ibid.*

#### FIRST EDITION OF THE REVISED STATUTES.

Preparation of  
Revised Statutes  
for printing, etc.  
Sec. 2, June 20,  
1874, v. 18, p. 113.

401. That the Secretary of State is hereby charged with the duty of causing to be prepared for printing, publication and distribution the revised statutes of the United States enacted at this present session of Congress; that he shall cause to be completed the head notes of the several titles and chapters and the marginal notes referring to the statutes from which each section was compiled and repealed by said revision; and references to the decisions of the courts of the United States explaining or expounding the same, and such decisions of State courts as he may deem expedient, with a full and complete index to the same.

Head notes.

Marginal refer-  
ences to original  
statutes.

References to  
judicial deci-  
sions.

Index.

Promulgation.

402. And when the same shall be completed, the said Secretary shall duly certify the same under the seal of the the United States, and when printed and promulgated as hereinafter provided, the printed volumes shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States, and of the several States and Territories.<sup>2</sup> *Sec. 2, act of June 20, 1874 (18 Stat. L., 113).*

Printed copies  
to be evidence.

Title of revi-  
sion of statutes.  
Sec. 3, *ibid.*

403. That the revision of the statutes of a general and permanent nature, with the index thereto, shall be printed in one volume, and shall be entitled and labeled "Revised Statutes of the United States;" and the revision of the statutes relating to the District of Columbia; to post-roads, and the public treaties in force on the first day of December, one thousand eight hundred and seventy-three, with a suitable index to each, shall be published in a separate volume, and entitled and labeled "Revised Statutes relating to District of Columbia and Post-Roads. Public Treaties." *Sec. 3, ibid.*

<sup>1</sup> The act of June 27, 1866 (14 Stat. L., 74), was revived by the act of May 4, 1870 (16 Stat. L., 96), which authorized the President to appoint three commissioners to prosecute and complete the work prescribed by that statute. The work of revision was to be completed within three years from the date of passage of the act (May 4, 1870). The act of March 3, 1873 (17 Stat. L., 579), authorized the appointment of a joint committee of Congress to accept the draft of the revision of laws, so far as the same was completed at the expiration of the time designated for that purpose (May 4, 1873). The same statute authorized the existing joint committee to contract with some suitable person or persons to prepare a revision of the statutes, already reported by the commissioners, in the form of a bill to be presented at the opening of the Forty-third Congress. The publication of the first edition of the Revised Statutes was authorized by the act of June 20, 1874 (18 Stat. L., 113); pp. 401-403, post.

<sup>2</sup> The first edition of the Revised Statutes is a transcript of the original in the State Department. It is prima facie evidence of the law, but the original is the only conclusive evidence of the exact text of the law. *Wright v. U. S.*, 15 C. Cls. R., 80, 87.

404. That the certificate to the printed volume of the revised statutes of the United States required by section two of "An act providing for publication of the revised statutes and laws of the United States," approved June twentieth, eighteen hundred and seventy-four, shall be made by the Secretary of State under the seal of the Department of State, and so much of said section as provides that such certificate shall be under the seal of the United States, is hereby repealed. *Act of December 28, 1874 (18 Stat. L., 293).*

Certificate to Revised Statutes.  
Dec. 28, 1874, v. 18, p. 293.

#### SCOPE OF THE REVISED STATUTES AND REPEAL PROVISIONS.

405. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the first day of December one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States.<sup>1</sup>

Scope of Revised Statutes.

Sec. 5595, R.S.

406. All acts of Congress passed prior to said first day of December one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local, or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactment.

Repeal of acts embraced in revision.

Sec. 5596, R.S.

407. The repeal of the several acts embraced in said revision, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been

Accrued rights reserved.

Sec. 5597, R.S.

<sup>1</sup>The Revised Statutes are an act of Congress. The enactment was approved and became the law on June 22, 1874. *Wright v. U. S.*, 15 C. Cls. R., 80. In case of doubt, ambiguity, or uncertainty the previous statutes may be referred to. *Ibid.* See also *Bowen v. U. S.*, 100 U. S., 508. *U. S. v. Bowen*, 100 U. S., 508; *Bate Refrigerating Co. v. Sulzberger*, 157 U. S., 1.

made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

Prosecutions  
and punish-  
ments.

Sec. 5598, R. S.

408. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

Acts of limita-  
tion.

Sec. 5599, R. S.

409. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

Arrangement  
and classification  
of sections.

Sec. 5600, R. S.

410. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.

Acts passed  
since Dec. 1, 1873,  
not affected.

Feb. 18, 1875, c.  
84, v. 18, p. 329;  
Mar. 3, 1875, c. 130,  
s. 9, v. 18, p. 401.

Sec. 5601, R. S.

411. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

## SECOND EDITION OF THE REVISED STATUTES.

### EDITION OF 1878.

Commissioner  
to prepare new  
edition of Re-  
vised Statutes.

Mar. 2, 1877, v.  
19, p. 268.

412. That the President of the United States be, and he is hereby, authorized to appoint, by and with the advice and consent of the Senate, one person, learned in the law, as a commissioner, for the purpose of preparing and publishing a new edition of the first volume of the Revised Statutes of the United States.<sup>1</sup> *Act of March 2, 1877 (19 Stat. L., 268).*

Duty of com-  
missioner.

Sec. 2, *ibid.*

413. That in performing this duty, said commissioner shall be required to incorporate into the text of the Revised

<sup>1</sup> The second edition of the Revised Statutes is only a new publication; a compilation, containing the original law with specific amendments incorporated therein according to the judgment of the editor. *Wright v. U. S.*, 15 C. Cls. R., 80. The Revised Statutes did not affect statutes passed between December 1, 1873, and June 22, 1874. See note 1 to paragraph 405 *ante*.

Statutes as published in the year anno Domini eighteen hundred and seventy-five, under the act of June twentieth, eighteen hundred and seventy-four, all the amendments which have been made in the revision so published since the first day of December, eighteen hundred and seventy-three, and all that shall be made up to the close of the present session of Congress, with marginal references to such amendatory acts, and to all the decisions of the several courts of the United States, (as far as the same may have been published,) which may have been made subsequent to those already cited in the margin of the present revision, and may include also citations to such judicial decisions of the various State courts as he may deem important; and he shall also make marginal references to the various statutes passed by Congress since the first day of December, eighteen hundred and seventy-three, not expressly therein declared to be amendments to the Revised Statutes, but which, in the opinion of said commissioner, may in any manner affect or modify any of the provisions of the said Revised Statutes, or any of the amendments thereto, indicating in such marginal notes by a difference in type the references to statutes of this kind, and he shall revise the indexes and incorporate therein references to the additions herein required. *Sec. 2, ibid.*

Amendments.

References.

Revision of indexes.

414. That there shall also be included in said edition the Articles of Confederation, the Declaration of our National Independence, the Ordinance of seventeen hundred and eighty-seven for the government of the Northwestern Territory, the Constitution of the United States, with foot notes referring to decisions of the federal courts thereon, the "Act to provide for the revision and consolidation of the statute laws of the United States," approved June twenty-seventh, eighteen hundred and sixty-six, and the "Act providing for publication of the Revised Statutes and the laws of the United States," approved June twentieth, eighteen hundred and seventy-four, as well as the present act. *Sec. 3, ibid.*

Additional matter to be included.  
*Sec. 3, ibid.*

415. That said new edition shall be completed in manuscript by said commissioner by the first day of January anno Domini eighteen hundred and seventy-eight, and by him presented to the Secretary of State for his examination and approval, who is hereby required to examine and compare the same as amended, with all the amendatory acts, and, within two months after having been submitted to him, and when the same shall be completed, the said Secretary shall duly certify the same under the seal of the Secretary of State, and when printed and promulgated as

When to be completed.  
*Sec. 4, ibid*Mar. 9, 1878, v.  
20, p. 27.

To be legal evidence

herein provided the printed volume shall be legal evidence of the laws therein contained, in all the courts of the United States, and of the several States and Territories, but shall not preclude reference to, nor control, in any case of discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three, and said Secretary shall cause fifteen thousand copies of the same to be printed and bound at the Government Printing Office, under the supervision of said commissioner, at the expense of the United States, and without unnecessary delay.' *Sec. 4, ibid.*

Mar. 9 1878. v.  
No. p. 27  
New edition of  
Revised Statutes  
to be prima facie  
evidence.  
Mar. 9, 1878, v.  
No. p. 27.

416. That an act entitled "An act to provide for the preparation and publication of a new edition of the Revised Statutes of the United States," approved March second, eighteen hundred and seventy-seven, be, and the same is

Under the authority conferred by this statute the Hon. George S. Boutwell was appointed a commissioner to prepare the new edition. The following extract from the preface to the second edition of the Revised Statutes will explain its scope:

By an act of Congress approved March 2 1877 (v. 19, c. 82, p. 268), authority was given for the appointment by the President of a commissioner, whose duty it should be to prepare and publish, subject to the examination and approval of the Secretary of State, "a new edition of the first volume of the Revised Statutes of the United States."

The jurisdiction of the commissioner was defined and limited by the statute. He was directed to incorporate into the text of the first edition of the statutes all the amendments made since the first day of December, eighteen hundred and seventy-three, including those made by the Forty-fourth Congress, with marginal references to the acts of amendment and to the decisions of the several courts of the United States, with like references to all the statutes passed in the same period, which, in the opinion of the commissioner, might in any manner affect or modify any of the provisions of the first edition of the Revised Statutes.

He was also directed to include in the new edition the Articles of Confederation, the Declaration of our National Independence, the Ordinance of Seventeen hundred and eighty-seven for the Government of the Northwestern Territory, and the Constitution of the United States, with footnotes referring to the decisions of the Federal courts thereon. These papers were not printed with the first edition of the statutes.

This edition is not in any proper sense a new revision of the statutes of the United States. The commissioner was not clothed with power to change the substance or to alter the language of the existing edition of the Revised Statutes, nor could he correct any errors or supply any omissions therein except as authorized by the several statutes of amendment. Of specific amendments there are, however, several hundred, which have been incorporated with the text. The portions of the statutes repealed are printed in italics and included in brackets, and the new matter introduced is printed in the ordinary roman letter and also included in brackets.

So much of the work as affects the text of the present edition has been examined, under the direction of the Hon. William M. Evarts, Secretary of State by Hon. Charles P. James one of the commissioners by whom the first edition of the Revised Statutes was prepared.

The acts of Congress passed since the first edition of the Revised Statutes was issued, and affecting the text thereof, are referred to in the margin of the respective sections so affected.

In this edition full and, it is believed, complete notes of reference to the opinions of the Supreme Court of the United States will be found under the several paragraphs of the Constitution to which the opinions respectively relate, and reference is also made to the small number of decisions which interpret or in any manner touch the Ordinance for the Government of the Northwestern Territory.

The appendix contains the various statutes which provide for or relate to the "revision and consolidation of the statute laws of the United States," and also a cross index by which the various provisions of the Revised Statutes may be traced to the original enactments in the Statutes at Large.

In the preparation of the index I have had the best assistance which I could command, and no labor has been avoided that could contribute in the least to the perfectness of the work. While it is not probable that the end sought has been attained, I indulge the hope that the character of the index may, in some reasonable degree, meet the expectation of Congress, the executive officers of the Government, the judiciary, and the profession generally.

The analytical index to the Constitution was prepared by W. J. McDonald, esq., late Chief Clerk of the United States Senate.

The historical notes to the Declaration of Independence, the Articles of Confederation, and the Constitution are taken from a work entitled "The Organic Laws of the United States of America," prepared by Maj. Ben. Perley Poore, and printed by authority of Congress.

hereby, amended as follows, to wit: By striking out from the ninth and tenth lines of section four [par. 415 supra] as published in the nineteenth volume of the Statutes at Large, the words "and conclusive"; and, in the tenth line, the words "and treaties"; and, by inserting after the word "Territories" at the end of the eleventh line, the following words, to wit: "but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress since the first day of December, eighteen hundred and seventy-three." *Act of March 9, 1878* (20 Stat. L., 27).

## SUPPLEMENTS TO THE REVISED STATUTES.

## THE SUPPLEMENT OF 1881.

417. That the supplement to the Revised Statutes, embracing the statutes general and permanent in their nature passed after the Revised Statutes with references connecting provisions on the same subject, explanatory notes, citations of judicial decisions, and a general index, prepared by William A. Richardson, be stereotyped at the Government Printing Office; and the index and plates thereof and all right and title therein and thereto shall be in and fully belong to the Government for its exclusive use and benefit. *Joint resolution No. 44, June 7, 1880* (21 Stat. L., 308).

Supplement to the Revised Statutes.  
Joint res. No. 44, June 7, 1880.  
v. 21, p. 308.

418. That six thousand three hundred and fifty-seven copies be printed, bound, and distributed as provided for the distribution of the Revised Statutes by the "Joint resolution providing for the distribution and sale of the new edition of the Revised Statutes of the United States", passed May twenty-second, eighteen hundred and seventy-eight, and joint resolution passed December twenty-first, eighteen hundred and seventy-eight, and such additional copies, on the order of the Secretary of State, as may be necessary from time to time, to be kept for sale in the same manner and on like terms as the Revised Statutes are required to be kept for sale, and to supply deficiencies and offices newly created; that for preparing and editing said supplement, including indexing and all clerical work necessary to fully complete said work, including the legislation of the Forty-sixth Congress, there shall be paid to said editor the sum of five thousand dollars; and each Senator and Member of the present Congress who would not receive

Editing and preparing supplement.

Ibid.

1878, res. 22,  
Stat. L., 20, 251.  
1878, res. 1,  
Stat. L., 20, 487.



copies under said joint resolutions shall receive the same number of copies as other Senators or Members receive under the same. *Ibid.*

To be prima  
facie evidence.

*Ibid.*

*Proviso.*

419. The publication herein authorized shall be taken to be prima facie evidence of the laws therein contained in all the courts of the United States and of the several States and Territories therein; but shall not preclude reference to, nor control, in case of any discrepancy, the effect of any original act as passed by Congress: *Provided*, That nothing herein contained shall be construed to change or alter any existing law.<sup>1</sup> *Ibid.*

#### THE SUPPLEMENT OF 1891, VOL. I.

Supplement of  
1891 to Revised  
Statutes.  
Apr. 9, 1890, v.  
26, p. 50.

Contents.

420. That the publication of the Supplement to the Revised Statutes, embracing the statutes general and permanent in their nature, passed after the Revised Statutes, with references connecting provisions on the same subject, explanatory notes, and citations of judicial decisions, be continued and issued in one volume, to include the general laws of the Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses, with a table of alterations and a general index to the whole, to be prepared and edited by the editor of the existing Supplement, authorized by the joint resolution of June twenty-eighth, eighteen hundred and eighty, numbered forty-four (Supplement to Revised Statutes, page five hundred and eighty-two), to be stereotyped at the Government Printing Office, using the present plates, as far as practicable, with such alterations as may be found necessary, the work and plates and all right and title therein and thereto to be in and fully belong to the Government for its exclusive use and benefit. *Act of April 9, 1890 (26 Stat. L., 50).*

Distribution of  
Supplement of  
1891.  
Sec. 2, *ibid.*

Sale.

421. That a sufficient number of copies be printed and bound for distribution, and to be distributed to members of Congress for themselves, and for distribution by them, to the departments, libraries, public officers, and others, the same number to each as heretofore provided by Congress for the distribution of the Revised Statutes of the United States, and the same number to the editor as to a member of Congress and such additional copies on the order of the Secretary of State as may be necessary from time to time to supply deficiencies and offices newly created, and for keeping for sale in the same manner and

<sup>1</sup> Under this resolution a supplement was published in 1881, entitled volume 1. It was then supposed that other volumes would be authorized, from time to time, by subsequent legislation. This proved not to be the case, as the act of April 9, 1890 (paragraph 420, post), provided for the continuation of the publication to be issued in one volume and to embrace the general laws passed subsequent to the issue of the Revised Statutes and including those of the Forty-seventh, Forty-eighth, Forty-ninth, Fiftieth, and Fifty-first Congresses. See note 2 to paragraph 423 post.

like terms as the Revised Statutes are required to be kept for sale. For preparing and editing said Supplement, including the legislation of the Fifty-first Congress, and the indexing and all clerical work necessary to fully complete the same, there shall be paid to said editor the sum of six thousand dollars. *Sec. 2, ibid.*

422. That the publication herein authorized shall be taken to be prima facie evidence of the laws therein contained, but shall not change nor alter any existing law, nor preclude reference to nor control in case of any discrepancy, the effect of any original act passed by Congress.<sup>1</sup> *Sec. 3, ibid.*

To be prima facie evidence.  
*Sec. 3, ibid.*

#### THE SUPPLEMENT OF 1895, VOL. II.

423. That the publication of the Supplement to the Revised Statutes of the United States shall be further continued under the editorial charge of the editor of the existing Supplement and his assistants.<sup>2</sup> *Act of February 27, 1893 (27 Stat. L., 477).*

Supplement of 1895, continued.  
Feb. 27 1893, v. 27 p. 477.

#### THE STATUTES AT LARGE.<sup>3</sup>

424. That the Secretary of State shall cause the statutes at large enacted by each Congress, which shall be edited and printed pursuant to the provisions of section seven of the act entitled "An act for publication of the Revised Statutes and the laws of the United States," approved June twentieth, eighteen hundred and seventy-four, to be

Statutes at Large.  
1874, c. 373, ss. 7, 9, p. 114.  
Sec. 9, Mar. 3, 1875, v. 18, p. 401.

<sup>1</sup>The volume published in conformity to the authority herein conferred was published in 1891, and is entitled "Vol. 1, Supplement to the Revised Statutes of the United States Second Edition, 1874-1891," and supersedes the volume published under the authority conferred by the joint resolution, No. 34 of June 7 1880 (21 Stat. L., 308).

<sup>2</sup>Under the authority conferred by this statute a second volume of the Supplement was published in 1895. It contains all general legislation of the Fifty-second and Fifty-third Congresses between January 22, 1892, and March 2, 1895.

<sup>3</sup>Table showing the period covered by each of the twenty-seven volumes of the Statutes at Large

Stat. L.	Period.		Stat. L.	Period.	
	From—	To—		From—	To—
Vol. 1 .....	Mar. 4 1789	Mar. 3, 1799	Vol. 15 .....	Mar. 4, 1867	Mar. 4, 1869
2 .....	Dec. 2, 1799	Mar. 3, 1813	16 .....	Mar. 4, 1869	Mar. 4, 1871
3 .....	May 29, 1813	Mar. 3, 1823	17 .....	Mar. 4, 1871	Mar. 4, 1873
4 .....	Dec. 1, 1823	Mar. 3, 1835	18 .....	Dec. 1, 1873	Mar. 4, 1875
5 .....	Dec. 7, 1835	Mar. 3, 1845	19 .....	Dec. 6, 1875	Mar. 3, 1877
6a .....	Mar. 4, 1789	Mar. 3, 1845	20 .....	Oct. 15, 1877	Mar. 4, 1879
7b .....			21 .....	Mar. 18, 1879	Mar. 4, 1881
8c .....			22 .....	Dec. 5, 1881	Mar. 3, 1883
9 .....	Dec. 1, 1845	Mar. 3, 1851	23 .....	Dec. 3, 1883	Mar. 3, 1885
10 .....	Dec. 1, 1851	Mar. 3, 1855	24 .....	Dec. 7, 1885	Mar. 3, 1887
11 .....	Dec. 3, 1855	Mar. 3, 1859	25 .....	Dec. 5, 1887	Mar. 2, 1889
12 .....	Dec. 5, 1859	Mar. 4, 1863	26 .....	Dec. 2, 1889	Mar. 3, 1891
13 .....	Dec. 7, 1863	Mar. 4, 1865	27 .....	Dec. 7, 1891	Mar. 3, 1893
14 .....	Dec. 4, 1865	Mar. 4, 1867			

a Private laws.

b Indian treaties.

c European treaties, with general index to vols. 1-8, inclusive, Statutes at Large.

stereotyped and offered for sale in the same manner and on the same terms as is provided in and by section nine of said act herein mentioned in respect to the laws of each session of Congress. That the provisions of section two of the act entitled "An act providing for the distribution of the Revised Statutes," approved February eighteenth, eighteen hundred and seventy-five, shall apply to the statutes at large enacted by each Congress and to the laws of each session of Congress, to be published pursuant to said act of June twentieth, eighteen hundred and seventy-four, in the same manner as if specially mentioned therein. *Sec. 9, act of March 3, 1875 (18 Stat. L., 401).*

Printing and  
binding.

**425.** That the Congressional Printer be, and he is hereby directed, in causing to be printed and bound an edition of the laws at the close of the session for the use of the Senate and the House of Representatives, to print the same from the stereotype plates of the edition prepared under the direction of the Department of State, with the index thereof; and so much of the act entitled "An act to expedite and regulate the printing of public documents, and for other purposes," approved June twenty-fifth, eighteen hundred and sixty-four, as requires the preparation of an alphabetical index, under the direction of the Joint Committee on Printing, be and the same is hereby, repealed. *Ibid.*

Distribution of  
pamphlet copies  
of acts of each  
session.

*Sec. 6, June 20,  
1874, v. 18, p. 113.*

**426.** That at the close of every session of Congress the Secretary of State shall cause to be distributed pamphlet copies of the acts and resolves of Congress for that session, edited and printed in the manner aforesaid, as follows: To the President and Vice-President of the United States, two copies each; to each Senator, Representative, and Delegate in Congress, one copy; to the librarian of the Senate, for the use of Senators, one hundred and twenty-six copies; to the librarian of the House, two hundred and fifty copies, for the use of the Representatives and Delegates; to the Library of Congress, fourteen copies; to the Department of State, including those for the use of legations and consulates, six hundred copies; to the Treasury Department, two hundred copies; to the War Department, including those for the use of officers of the Army, two hundred copies; to the Navy Department, including those for the use of officers of the Navy, one hundred copies; to the Department of the Interior, including those for the use of the surveyors-general and registers and receivers of public land offices, two hundred and fifty copies; to the Post-Office Department, fifty copies; to the Department of Justice, including those for the use of the chief and associate justices, the judges and the officers of the United States and territorial

courts, four hundred and twenty-five copies; to the Department of Agriculture, ten copies; to the Smithsonian Institution, five copies; to the Government Printing Office, two copies; to the governors and secretaries of Territories, one copy each; to be retained in the custody of the Secretary of State, one thousand copies; and ten thousand copies shall be distributed to the States and Territories in proportion to the number of Senators, Representatives, and Delegates in Congress to which they are at the time entitled. *Sec. 6, act of June 20, 1874 (18 Stat. L., 113).*

427. That after the close of each Congress the Secretary of State shall have edited, printed and bound a sufficient number of the volumes containing the Statutes at Large enacted by that Congress to enable him to distribute copies, or as many thereof as may be needed, as follows: To the President of the United States, four copies, one of which shall be for the library of the Executive Mansion, and one copy shall be for the use of the Commissioner of Public Buildings; to the Vice President of the United States, one copy; to each Senator, Representative, and Delegate in Congress, one copy; to the librarian of the Senate, for the use of Senators, one hundred and fourteen copies; to the librarian of the House, for the use of Representatives and Delegates, four hundred and ten copies; to the Library of Congress, fourteen copies, including four copies for the law library; to the Department of State, including those for the use of legations and consulates, three hundred and eighty copies; to the Treasury Department, including those for the use of officers of customs, two hundred and sixty copies; to the War Department, including a copy for the Military Academy at West Point, fifty copies; to the Navy Department, including a copy for the library at the Naval Academy at Annapolis, a copy for the library of each navy-yard in the United States, a copy for the library of the Brooklyn Naval Lyceum, and a copy for the library of the Naval Institute at Charlestown, Massachusetts, sixty-five copies; to the Department of the Interior, including those for the use of the surveyors-general and registers and receivers of public land-offices, two hundred and fifty copies; to the Post-Office Department, fifty copies; to the Department of Justice, including those for the use of the chief and associate justices, the judges and the officers of the United States and territorial courts, four hundred and twenty-five copies; to the Department of Agriculture, five copies; to the Smithsonian Institution, two copies; to the Government Printing-Office, one copy;

Preparation  
of the laws of  
each Congress.  
*Sec. 7, ibid.*

and the Secretary of State, shall supply deficiencies and offices newly created. *Sec. 7, ibid.*

Printed copies  
to be evidence.

428. That the said printed copies of the said acts of each session and of the said bound copies of the acts of each Congress shall be legal evidence of the laws and treaties therein contained, in all the courts of the United States and of the several States therein. *Sec. 8, ibid.*

#### ARMY REGULATIONS.

Par.

429. President authorized to make and publish regulations for the Army.

Par.

430. Secretary of War to cause all regulations now in force to be codified and published to the Army.

President authorized to make and publish regulations for the Army.

Mar. 1, 1875, v. 18, p. 337.

429. That so much of the act approved July 15, 1870, entitled "An act making appropriations for the support of the Army for the year ending June 30, 1871, and for other purposes" as requires the system of General Regulations for the Army therein authorised to be reported to Congress at its next session, and approved by that body be, and the same is hereby repealed; and the President is hereby authorised, under said section, to make and publish regulations for the government of the Army in accordance with existing laws.<sup>1</sup> *Act of March 1, 1875 (18 Stat. L., 337).*

<sup>1</sup> The Army Regulations derive their force from the power of the President as Commander in Chief, and are binding upon all within the sphere of his legal and constitutional authority. *Kurtz v. Moffatt*, 115 U. S., 487, 503; *U. S. v. Eliason*, 16 Pet., 291; *U. S. v. Freeman*, 3 How., 556. The power of the Executive to establish rules and regulations for the government of the Army is undoubted. The power to establish implies, necessarily, the power to modify or repeal, or to create anew. The Secretary of War is the regular, constitutional organ of the President for the administration of the military establishment of the nation, and orders publicly promulgated through him must be received as the act of the Executive and, as such, be binding upon all within the sphere of his legal or constitutional authority. Such regulations can not be questioned or defied because they may be thought unwise, or mistaken. *U. S. v. Eliason*, 16 Pet., 291, 302.

The term regulations of an Executive Department describes rules and regulations relating to subjects on which a Department acts, which are made by the head under an act of Congress conferring that power, and thereby giving to such regulations the force of law. A mere order of the President or of a Secretary is not a regulation. *Harvey v. U. S.*, 3 C. Cls. R., 38, 42; *Dig. Opin. J. A. Gen.*, 166, par. 1, and note 1. A "regulation" affects a class of officers; an "instruction" is a direction to govern the conduct of the particular officer to whom it is addressed. *Landram v. U. S.*, 16 C. Cls. R., 74. The Army Regulations when sanctioned by the President have the force of law, because it is done by him by the authority of law. *U. S. v. Freeman*, 3 How., 556; *Gratiot v. U. S.*, 4 How., 80; *Ex parte Reed*, 100 U. S., 13; *Smith v. U. S.*, 23 C. Cls. R., 452. When Congress permits regulations to be formulated and published and carried into effect from year to year, the legislative ratification must be implied. *Maddox v. U. S.*, 20 C. Cls. R., 193, 198.

The authority of the head of an Executive Department to issue orders, regulations, and instructions, with the approval of the President, is subject to the condition, necessarily implied, that they must be consistent with the statutes which have been enacted by Congress. *U. S. v. Symonds*, 120 U. S., 46, 49; *U. S. v. Bishop*, *idem.*, 51; *Dig. Opin. J. A. Gen.*, 166, par. 1, note 2; par. 6, p. 168. Regulations can have no retroactive effect. *U. S. v. Davis*, 132 U. S., 334. Provision of statute exists by which the statute regulations of the Army may, within certain limits, be altered by the Secretary of War, but there is no such provision in regard to the statute regulations of the Navy. 6 *Opin. Att. Gen.*, 10; 8 *ibid.*, 337. The same discrepancy exists in the military law of Great Britain. *Ibid.*

Regulations prescribed and framed by the Secretary of War and which are intended for the direction and government of the officers of the Army and agents of the Department do not bind the Commander in Chief nor the head of the War Department. *Burns v. U. S.*, 12 Wall., 246; *Smith v. U. S.*, 24 C. Cls. R., 209, 215. But see *Arthur v. U. S.*, 16 C. Cls. R., 422, and *U. S. v. Barrows*, 1 Abb., 351.

Regulations which heads of Departments are expressly authorized to make, in which the public is interested, become a part of that body of public records of which the courts take judicial notice. *Caha v. U. S.*, 152 U. S., 211.

430. That the Secretary of War is authorized and directed to cause all the regulations of the Army now in force to be codified and published to the Army, and to defray the expenses thereof out of the contingent fund of the Army.<sup>1</sup> *Sec. 2, act of June 23, 1879 (21 Stat. L., 34).*

Secretary of War to cause all regulations now in force to be codified and published to the Army.

Sec. 2, June 23, 1879, v. 21, p. 34.

<sup>1</sup>The Secretary of War is expressly authorized by other enactments of Congress to prescribe regulations for the transportation, safe-keeping, and distribution of articles of supply purchased by the Quartermaster's and Subsistence Departments (sec. 219, R. S.); for the preparation, submission, and opening of bids, act of April 10, 1878 (20 Stat. L., 36); for the deposit of refuse and debris from rivers that is calculated to interfere with navigation, act of Aug. 5, 1886 (24 Stat. L., 329); for the deposit of refuse material beyond the harbor lines established in accordance with statutes, sec. 11, act of Sept. 11, 1890 (26 Stat. L., 455); for the use of the channel at the mouth of the Mississippi River which has been improved by the United States, act of June 1, 1874 (18 Stat. L., 50); for the use and operation of canals and other works of river and harbor improvement which have been purchased or constructed by the United States, sec. 4, act of Aug. 17, 1894 (28 Stat. L., 362); for the construction of bridges across the navigable waters of the United States; for the use of certain drawbridges, sec. 5 (ibid.); to secure a proper administrative examination of accounts sent to him in accordance with the provisions of the act of July 31, 1894 (28 Stat. L., 211); to carry out the provisions of the act of March 29, 1894 (28 Stat. L., 47), in relation to property returns, etc.

Regulations may be divided into different classes with respect to the question of the power of the person making the regulation to authorize an exception to it. There are, or may be, those which have received the sanction of Congress, and it is evident that the Secretary of War would have no authority to make an exception to one of these. There are also those that are made pursuant to and in aid of a statute. These may be modified, but until this is done are binding as well on the authority that made them as on others. *U. S. v. Barrows*, 1 Abbott, 351.

There is also a large body of other regulations emanating from and depending solely on the authority of the President as Commander in Chief. With reference to such regulations it has, I believe, been sometimes claimed that the same rule should be applied to them that is applied to the regulations made pursuant to statute. But this has not been done in practice, and I do not think that it should be done, for the reason that it would seem to be an unnecessary, embarrassing, and perhaps unconstitutional limitation of the authority of the President as Commander in Chief. *Opin. J. A. Gen. March 5, 1896.*

#### HISTORICAL NOTE.

The first volume of Army Regulations, using that term in the sense in which it is now understood, was issued to the Army on May 1, 1813, under the authority conferred by the act of March 3 of that year.

From March 29, 1779, until May 1, 1813, the "Regulations for the Order and Discipline of the Troops of the United States" were in force. They were prepared by Major-General Baron Steuben, the Inspector-General of the Army during the latter part of the war of the Revolution, and consisted in great part of matter which would now be properly termed drill regulations. The work was first printed at Worcester, Mass., in 1788, and was formally approved and adopted by Congress on March 29, 1779. The last edition of the Steuben regulations appeared in 1809, and it continued in use as a drill book after it had ceased to have authority as a volume of army regulations. In 1808 a small volume was published, apparently with the sanction of the War Department, containing the Articles of War which had been enacted in 1806, to which were added such military laws as were then in force.

Section 5 of the act of March 3, 1813 (2 Stat. L., 819), required the Secretary of War to prepare general regulations which, "when approved by the President of the United States, shall be respected and obeyed until altered or revoked by the same authority." The volume of regulations issued in pursuance of this authority was entitled "Military laws and rules and regulations for the armies of the United States," and was approved by the President on May 1, 1813. It contained the Articles of War of 1806, together with the statutes relating to the military establishment and a small number of regulations properly so called. Editions of this work were published in 1814 and 1815, the latter, however, without the authority of the War Department.

The act of April 24, 1816 (3 Stat. L., 298), provided that the "regulations in force before the reduction of the Army be recognized as far as the same shall be found applicable to the service, subject, however, to such alterations as the Secretary of War may adopt with the approbation of the President." In accordance with this legislation a volume of regulations was issued in September, 1816, and in January, 1820, a new edition containing the orders of the War Department issued since September, 1816.

Section 14 of the act of March 2, 1821 (3 Stat. L., 616), contained a provision that "the system of regulations prepared by Major-General Scott shall be, and the same are hereby, approved and adopted for the government of the Army of the United States and of the militia when in the service of the United States." These regulations were approved by President Monroe and published to the Army in July, 1821. On May 7, 1822, section 14 of the act of March 2, 1821, was formally repealed, thus withdrawing the legislative sanction which had been conferred by the statute above cited. As to this enactment Attorney-General Wirt advised that, "notwithstanding such repeal, the regulations having received the sanction of the President, continued in force by the authority of the President in all cases where they did not conflict with positive legislation." (1 *Opin. Att. Gen.*, 549.) The Regulations of 1821 were

## THE ARMY REGISTER.

Par.

431. Army Register to be furnished annually to the Senate.

432. The same to be furnished annually to the House of Representatives.

Par.

433. Schedule of pay to appear.

434. Volunteer rank.

435. Lineal rank.

Army Register to be furnished annually to the Senate.

Sen. res. Dec. 13, 1815.

**431.** That the Secretary of War and the Secretary of the Navy be requested to furnish annually, on the first of January, each member of the Senate with a copy of the Register of the officers of the Army and Navy of the United States. *Senate resolution, December 13, 1815.*

The same to be furnished annually to the House of Representatives.

House res. Feb. 1, 1830.

**432.** That the Secretary of War cause to be annually laid before this House a number of copies of the printed army list, equal to the number of members of the House. *House resolution, February 1, 1830.*

revised under the direction of General Scott and a new edition was issued on March 1, 1825, which continued in force until 1835.

A volume of General Regulations, compiled under the direction of Major-General Macomb, was printed and prepared for issue on September 1, 1835, but was not formally approved and promulgated until December 31, 1836. A second edition of this work, with some modifications, was issued in 1841, and a third edition, containing alterations and amendments, which had been promulgated in orders or taken from former volumes of regulations, was issued to the Army on May 1, 1847.

On January 1, 1857, a volume of Army Regulations, containing a number of important modifications, together with a general rearrangement of paragraphs and subject matter, was prepared under the direction of Secretary Davis, and published with the approval of the President on January 1, 1857. This volume continued in force until August 10, 1861, when it was replaced by a revised edition; a second edition of this work was issued on June 25, 1863, containing the "changes and laws affecting Army Regulations and Articles of War."

The thirty-seventh section of the act of July 28, 1866 (14 Stat. L., 337), directed the Secretary of War "to have prepared and to report to Congress at its next session a code of regulations for the government of the Army and of the militia in actual service, which shall embrace all necessary orders and forms of a general character for the performance of all duties incumbent on officers and men in the military service, including rules for the government of courts-martial; the existing regulations to remain in force until Congress shall have acted on said report." No code of regulations having been submitted, Congress provided, in section 20 of the act of July 15, 1870 (16 Stat. L., 319), that "the Secretary of War shall prepare a system of general regulations for the administration of the affairs of the Army, which, when approved by Congress, shall be in force and obeyed until altered or revoked by the same authority, and said regulations shall be reported to Congress at its next session: *Provided*, That the said regulations shall not be inconsistent with the laws of the United States."

In conformity to this legislation a code of regulations, which had been prepared by a board of officers of which Inspector-General Marcy was the president, was submitted to the House of Representatives on February 17, 1873, and was by that body referred to the Committee on Military Affairs and ordered to be printed. No steps looking to their adoption were taken during the remainder of the session, and the Fifty-second Congress adjourned without action. The question was taken up by the Military Committee of the House of Representatives in the Forty-third Congress, and the proposition of adopting a code of Army Regulations was carefully considered. The conclusion reached by the committee was that the power to make and amend or alter regulations had best be left to Executive discretion. To that end a recommendation was submitted, which was adopted by Congress and approved by the President on March 1, 1875 (18 Stat. L., 337). This enactment repealed section 20 of the act of July 15, 1870, and authorized the President "to make and publish regulations for the government of the Army in accordance with existing laws."

Section 2 of the act of June 23, 1879 (21 Stat. L., 34), authorized and directed the Secretary of War "to cause all the regulations now in force to be codified and published to the Army," and provided that the expense attending the publication of the work should be defrayed from the appropriation for the contingent expenses of the Army for the current fiscal year. Under the authority thus conferred the Regulations of 1881 were prepared and issued to the Army, the order of promulgation bearing date February 17, 1881. A revision and condensation of this volume was issued by the Secretary of War on February 9, 1889. The Regulations now in force became effective on October 31, 1895, having received Executive approval on that date.

433. That there be annexed annually hereafter to the Army Register an accurate schedule of the pay and emoluments, with the commutation value thereof, to which the various officers of the Army of each grade are entitled. Schedule of pay, etc. House res. Aug. 30, 1842.  
*House resolution, August 30, 1842.*

434. The highest volunteer rank which has been held by officers of the Regular Army shall be entered, with their names, respectively, upon the Army Register. Volunteer rank, etc. Sec. 1226, R. S.

435. That in every Official Army Register hereafter issued the lineal rank of all officers of the line of the Army shall be given separately for the different arms of the service; and if the officer be promoted from the ranks, or shall have served in the volunteer army, either as an enlisted man or officer, his service as a private and non-commissioned officer shall be given, and in addition thereto the record of his service as volunteer. Lineal rank, etc. Sec. 2, June 18, 1878, v. 20, p. 149. *Sec. 2, act of June 18, 1878 (20 Stat. L., 149).*



## CHAPTER XI.

### THE MILITARY ESTABLISHMENT—GENERAL PROVISIONS OF ORGANIZATION—GENERAL OFFICERS, AIDS, AND MILITARY SECRETARIES.

#### ORGANIZATION.

Par.	Par.
436. Composition of the Army of the United States.	440. Original number of, restored. Allowance for horses.
437. Commissions not to be vacated.	441. Lieutenant-General's aids and secretary.
438. Number of enlisted men.	442. Aids of major and brigadier generals.
439. Indian scouts.	

Composition of the Army of the United States.

Mar. 3, 1799, v. 1, p. 752; July 25, 1866, v. 14, p. 223; July 28, 1866, v. 14, p. 332; Mar. 3, 1869, v. 15, p. 318; July 15, 1870, v. 16, p. 318, ch. 131; Mar. 3, 1875, v. 18, p. 419, ch. 142; Mar. 3, 1875, v. 18, p. 478; June 26, 1876, v. 19, p. 61; Aug. 12, 1876, v. 19, p. 131; Feb. 27, 1877, v. 19, p. 241; July 24, 1876, v. 19, p. 97.

July 5, 1884, v. 23, p. 109; July 29, 1886, v. 24, p. 167; Mar. 1, 1887, v. 24, p. 435; June 20, 1890, v. 26, p. 167; May 9, 1892, v. 27, p. 27.

Sec. 1094, R. S.

**436.** The Army of the United States shall consist of—  
One General.<sup>1</sup>  
One Lieutenant-General.<sup>2</sup>  
Three major-generals.

<sup>1</sup> This grade ceased to exist at the death of Gen. P. H. Sheridan on August 5, 1888. *a*

<sup>2</sup> This grade ceased to exist, as a grade of rank on the active list of the Army, at the retirement of Lieutenant-General Schofield on September 29, 1895.

*a* This office was created by section 9 of the act of March 3, 1799 (1 Stat. L., 752), which provided that "a commander of the Army of the United States shall be appointed and commissioned by the style of 'General of the armies of the United States.'" No appointment was made to the office thus created, and the grade was abolished, by implication, by section 3 of the act of March 16, 1802 (2 Stat. L., 133). It was revived by the act of July 25, 1866 (14 Stat. L., 223), and recognized and continued by section 9 of the act of July 28, 1866 (14 Stat. L., 333). Section 6 of the act of July 15, 1870 (16 Stat. L., 318), contained a provision, however, that "the offices of General and Lieutenant-General shall continue until a vacancy shall exist in the same, and no longer; and when such vacancy shall occur in either of said offices, immediately thereupon all laws and parts of laws creating said office shall become inoperative, and shall by virtue of this act from thenceforward be held to be repealed." The office ceased to exist, as a grade of military rank, at the death of Gen. W. T. Sherman, on February 14, 1891. The act of March 3, 1885 (23 Stat. L., 434), authorized the appointment of a "General of the Army on the retired list," which was conferred upon Gen. Ulysses S. Grant, and expired at the death of that officer on July 23, 1885. By the act of June 1, 1888 (25 Stat. L., 165), the grade of Lieutenant-General was discontinued and merged in that of General of the Army, which was to continue during the lifetime of the Lieutenant-General then in office, when it was to cease. See note 1, *supra*.

*Chief of staff to the General of the Army.*—The office of chief of staff to the Lieutenant-General was created by the act of March 3, 1865 (13 Stat. L., 500), which authorized the President to appoint a chief of staff to the Lieutenant-General of the Army with the rank, pay, and emoluments of a brigadier-general in the Army. Section 2 of the act of July 25, 1866 (14 Stat. L., 223), provided for the transfer of the office to the staff of the General of the Army. The office was abolished by the act of April 3, 1869 (16 Stat. L., 6).

Six brigadier-generals.

Five regiments of artillery.

Ten regiments of cavalry.

Twenty-five regiments of infantry.

An Adjutant-General's Department.

An Inspector-General's Department.

A Quartermaster's Department.<sup>1</sup>

[A corps of Army service men.]<sup>2</sup>

A Subsistence Department.<sup>3</sup>

A Corps of Engineers.

A battalion of engineer soldiers.

An Ordnance Department.

The enlisted men of the Ordnance Department.

A Pay Department.

A Medical Department.

[A Hospital Corps.]<sup>4</sup>

[A Signal Corps.]<sup>5</sup>

[A Judge-Advocate-General's Department.]

[A Chief of the Record and Pension Office.]<sup>6</sup>

Thirty post-chaplains. Four regimental chaplains.

One band, stationed at the Military Academy.<sup>7</sup>

A force of Indian scouts, not exceeding one thousand, and the professors and corps of cadets of the United States Military Academy.

*Provided*, That when a vacancy occurs in the office of General<sup>8</sup> or Lieutenant-General<sup>9</sup> such office shall cease and all enactments creating or regulating such offices shall, respectively, be held to be repealed.

**437.** None of the provisions of this Title, relating to the organization of the Army, shall be construed to vacate the commission of any officer now properly in the service, or borne on the Army Register as an officer retired from active service, or to require new appointments to fill the grades mentioned herein, which are now properly filled according to said provisions.

Commissions  
not vacated.  
July 28, 1866, c.  
299, s. 31, v. 14, p.  
337.

Sec. 1217, R. S.

<sup>1</sup>The corps of quartermaster-sergeants added by the act of July 5, 1884. *a*

<sup>2</sup>The corps of Army service men added by the act of June 20, 1890. *a*

<sup>3</sup>A force of post commissary-sergeants (*b*) added by section 1142, Rev. Stat.

<sup>4</sup>The Hospital Corps added by the act of March 1, 1887, the hospital stewards previously authorized being merged in the corps so created. *c*

<sup>5</sup>The Signal Corps reorganized by act of October 1, 1890 (26 Stats. L., 653).

<sup>6</sup>The Record and Pension Office created by the act of May 9, 1892 (27 Stat. L., 27).

<sup>7</sup>Fifteen bands were authorized by section 7 of the act of July 28, 1866 (14 Stat. L., 332). By the act of March 3, 1889 (15 Stat. L., 318), they were required to be honorably discharged without delay, with the exception of the band stationed at the Military Academy.

<sup>8</sup>This grade ceased to exist at the death of Gen. P. H. Sheridan on August 5, 1888.

<sup>9</sup>This grade ceased to exist, as a grade of rank on the active list of the Army, at the retirement of Lieutenant-General Schofield on September 29, 1895.

*a* See the chapter entitled THE QUARTERMASTER'S DEPARTMENT.

*b* See the chapter entitled THE SUBSISTENCE DEPARTMENT.

*c* See the chapter entitled THE MEDICAL DEPARTMENT.

Number of enlisted men. **438.** There shall not be in the Army at one time more than thirty thousand enlisted men.<sup>1</sup>  
 July 15, 1870, c. 294, s. 2, v. 16, p. 317; June 16, 1874, c. 285, v. 18, p. 72; Mar. 3, 1875, c. 133, v. 18, p. 452; July 24, 1876, c. 226, v. 19, p. 97; Aug. 15, 1876, c. 301, v. 19, p. 204. Sec. 1115, R. S.

Indian scouts. **439.** The President is authorized to enlist a force of Indians, not exceeding one thousand, who shall act as scouts in the Territories and Indian country. They shall be discharged when the necessity for their service shall cease, or at the discretion of the department commander.  
 July 28, 1866, c. 299, s. 6, v. 14, p. 333.

Original number of, restored. **440.** That so much of the Army appropriation act of twenty-fourth July, eighteen hundred and seventy-six, as limits the number of Indian scouts to three hundred is hereby repealed; and sections ten hundred and ninety-four and eleven hundred and twelve of the Revised Statutes, authorizing the employment of one thousand Indian scouts, are hereby continued in force: *Provided*, That a proportionate number of non-commissioned officers may be appointed. And the scouts, when they furnish their own horses and horse-equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed. *Act of August 12, 1876 (19 Stat. L., 131).*  
 Allowance for horses.

#### GENERAL OFFICERS, AIDS, AND MILITARY SECRETARIES.

Lieutenant-General's aids and secretary. **441.** The Lieutenant-General may select from the Army two aids and one military secretary, who [shall] have the rank of lieutenant-colonel of cavalry while serving on his staff.<sup>2</sup>  
 July 25, 1866, c. 232, s. 2, v. 14, p. 223; July 28, 1866, c. 299, s. 9, v. 14, p. 333; Feb. 27, 1877, c. 69, v. 19, p. 241. Sec. 1097, R. S.

Aids of major and brigadier generals. **442.** Each major-general shall have three aids, who may be selected by him from captains or lieutenants of the

<sup>1</sup> The acts of June 16, 1874 (18 Stat. L., 72), March 3, 1875 (18 Stat. L., 452), July 24, 1876 (19 Stat. L., 97), November 21, 1877 (20 Stat. L., 2), and June 18, 1878 (20 Stat. L., 146), contained a provision limiting the number of enlisted men in the Army to 25,000, including hospital stewards and Indian scouts. The act of June 23, 1879 (21 Stat. L., 30), contained the requirement that "no money appropriated by this act shall be paid for recruiting the Army beyond the number of twenty-five thousand enlisted men, including Indian scouts and hospital stewards; and thereafter there shall be no more than twenty-five thousand enlisted men in the Army at any one time, unless otherwise authorized by law." This provision was repeated in the acts of May 4, 1880 (21 Stat. L., 110), February 24, 1881 (21 Stat. L., 346), June 30, 1882 (22 Stat. L., 117), March 3, 1883 (22 Stat. L., 456), July 5, 1884 (23 Stat. L., 107), and March 3, 1885 (23 Stat. L., 357).

Sections 6 and 7 of the act of July 29, 1861 (12 Stat. L., 279), increasing the military establishment, declared such increase to be for the period of the existing rebellion and, unless otherwise ordered by Congress, authorized the military establishment to be reduced to a number not exceeding twenty-five thousand men "within one year after the constitutional authority of the Government of the United States shall be reestablished, and organized resistance to such authority shall no longer exist."

<sup>2</sup> The office of Lieutenant-General was created by section 5 of the act of May 28, 1798 (1 Stat. L., 558), but was abolished by section 9 of the act of March 3, 1799 (1 Stat. L., 752), creating the grade of general. It was revived by joint resolution No. 9 of February 15, 1855 (10 Stat. L., 723), and conferred, by brevet, on Maj. Gen. Winfield Scott, and ceased to exist at the death of that officer on May 29, 1866. It was again revived by the act of February 29, 1864 (13 Stat. L., 11), and recognized and continued by section 9 of the act of July 28, 1866, subject to the provision embodied in section 6 of the act of July 15, 1870, above cited. By joint resolution No. 9, of February 5, 1895 (28 Stat. L., 968), the grade of lieutenant-general was revived for the third time, with the proviso that "when the office had been once filled and had become vacant, the resolution should expire and become of no effect." See note 2 to paragraph 506, ante.

Army, and each brigadier-general shall have two aids, who may be selected by him from lieutenants of the Army.<sup>1</sup>

July 21, 1861, c. 24, s. 3, v. 12, p. 280; July 28, 1866, c. 299, s. 9, v. 14, p. 333.

<sup>1</sup> A major-general is allowed by law three aids, to be taken from captains or lieutenants of the Army. A brigadier-general is allowed two, to be taken from the lieutenants of the Army. An officer assigned to duty in accordance with his brevet rank as major-general or brigadier-general may, with the special sanction of the War Department, be allowed the aids of the grade. General officers may select their aids from officers serving in their commands, subject to the restrictions herein prescribed, but appointments as aids of officers serving without such limits must receive the approval of the Secretary of War. An officer will be appointed aid to a general officer only after he shall have actually served with troops for at least three of the five years immediately preceding such appointment. He will hold such appointment for no longer period than four years, except that, upon the request of a general officer whose retirement by reason of age will occur within one year, the tour of four years may be extended by the Secretary of War to the date of such retirement. (Par. 33, A. R., 1895.)

Sec. 1098, R. S.

For statutory provisions and executive regulations respecting the staffs of general officers when assigned to commands see the chapter entitled **RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.**

## CHAPTER XII.

### RANK AND COMMAND—TACTICAL AND TERRITORIAL ORGANIZATIONS.

Par.	Par.
443. Command, when different corps happen to join.	449. Assignment and transfer of engineers.
444. Regular and volunteer officers on same footing as to rank, etc.	450. Medical officers not to command in line or in other staff corps.
445. Rank of militia officers when on duty with regular or volunteer forces.	451. Pay officers not to command in line or in other staff corps.
446. Relative rank of army and navy officers.	452. Tactical organizations.
447. Relative rank, how determined.	453. Military headquarters, location.
448. Assignments to duty according to brevet rank.	454. The same.

Command, when different corps happen to join.

122 Art. War.

443. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command<sup>1</sup> the whole, and give orders for what

<sup>1</sup> The terms "rank" and "command" have received Executive interpretation in paragraphs 7 and 13 of the Army Regulations of 1895.

Military rank is that character or quality bestowed on military persons which marks their station, and confers eligibility to exercise command or authority in the military service within the limits prescribed by law. It is divided into degrees or grades, which mark the relative positions and powers of the different classes of persons possessing it. (Par. 7, A. R., 1895.)

Rank is generally held by virtue of office in a regiment, corps, or department, but may be conferred independently of office, as in the case of retired officers and of those holding it by brevet. (Par. 8, A. R., 1895.)

The following are the grades of rank of officers and noncommissioned officers:

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|---|--|
| <ol style="list-style-type: none"> <li>1. Major-general.</li> <li>2. Brigadier-general.</li> <li>3. Colonel.</li> <li>4. Lieutenant-colonel.</li> <li>5. Major.</li> <li>6. Captain.</li> <li>7. First lieutenant.</li> <li>8. Second lieutenant.</li> <li>9. Cadet.</li> <li>10. Sergeant-major (regimental).</li> </ol> | <ol style="list-style-type: none"> <li>11. Quartermaster-sergeant (regimental).</li> <li>12. Ordnance, commissary, and post quartermaster-sergeant, hospital steward, first-class sergeant of the Signal Corps, chief musician, principal musician, chief trumpeter, and saddler sergeant.</li> <li>13. First sergeant.</li> <li>14. Sergeant and acting hospital steward.</li> <li>15. Corporal.</li> </ol> |
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In each grade, date of commission, appointment, or warrant determines the order of precedence. (Par. 9, A. R., 1895.)

A determination by the legislative and executive branches of the Government, as to the relation or superior authority among military officers, is conclusive upon the judiciary. *De Celis v. U. S.*, 13 C. Cls. R., 117.

is needful to the service, unless otherwise specially directed by the President, according to the nature of the case. *One hundred and twenty-second article of war.*

**444.** In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.<sup>1</sup> *One hundred and twenty-third article of war.*

Regular and volunteer officers on same footing as to rank, etc.  
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.

123 Art. War.

**445.** Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like-grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States. *One hundred and twenty-fourth article of war.*

Rank of militia officers when on duty with regular or volunteer forces.  
Mar. 2, 1867, c. 159, s. 2, v. 14, p. 435.

124 Art. War.

**446.** The relative rank between officers of the Navy, whether on the active or retired list, and officers of the Army, shall be as follows, lineal rank only being considered:

Relative rank of navy and army officers.  
July 16, 1862, c. 183, s. 13, v. 12, p. 585; Dec. 21, 1864, c. 6, s. 1, v. 13, p. 420; July 25, 1866, c. 231, s. 1, v. 14, p. 222; Mar. 2, 1867, c. 174, s. 1, v. 14, pp. 515, 516; Mar. 3, 1883, v. 22, p. 472.

The Vice-Admiral shall rank with the Lieutenant-General.

Rear-admirals with major-generals.

Commodores with brigadier-generals.

Captains with colonels.

Commanders with lieutenant-colonels.

Lieutenant-commanders with majors.

Lieutenants with captains.

Lieutenants, junior grade, with first lieutenants.

Ensigns with second lieutenants.

Sec. 1466, R. S.

<sup>1</sup> Command is exercised by virtue of office and the special assignment of officers holding military rank who are eligible by law to exercise command. Without orders from competent authority an officer can not put himself on duty by virtue of his commission alone, except as contemplated in the twenty-fourth and one hundred and twenty-second articles of war. (Par. 13, A. R., 1895.)

The following are the commands appropriate to each grade:

1. For a captain, a company.

2. For a major or lieutenant-colonel, a battalion or squadron.

3. For a colonel, a regiment.

4. For a brigadier-general, two regiments.

5. For a major-general, four regiments. (Par. 14, A. R., 1895.)

The functions assigned to any officer in these regulations by title of office devolve upon the officer acting in his place, except when otherwise specified. An officer in temporary command shall not, except in urgent cases, alter or annul the standing orders of the permanent commander without authority from the next higher commander. (Par. 15, A. R., 1895.)

An officer who succeeds to any command or duty stands in regard to his duties in the same situation as his predecessor. The officer relieved will turn over to his successor all orders in force at the time and all the public property and funds pertaining to his command or duty, and will receive therefor duplicate receipts showing the condition of each article. (Par. 16, A. R., 1895.)

When an officer is charged with directing an expedition or making a reconnaissance, without having command of the escort, the commander of the escort will consult him touching all arrangements necessary to secure the success of the operation. (Par. 19, A. R., 1895.) For statutory provisions respecting the exercise of command by staff officers see the chapter called THE STAFF DEPARTMENTS. See, also, paragraphs 17 and 18, A. R., 1895.

Relative rank,  
how determined.  
Mar. 2, 1867, c.  
159, s. 1, v. 14, p.  
434.

**447.** In fixing relative rank<sup>1</sup> between officers of the same grade and date of appointment and commission, the time which each may have actually served as a commissioned officer of the United States, whether continuously or at different periods, shall be taken into account. And in computing such time, no distinction shall be made between service as a commissioned officer in the Regular Army and service since the 19th day of April, 1861, in the volunteer forces, whether under appointment or commission from the President or from the governor of a State.

Sec. 1219, R. S.

Assignment to  
duty according  
to brevet rank.

**448.** Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned.

Sec. 1211, R. S.

Assignment  
and transfer of  
engineers.

Apr. 10, 1866, c.  
20, art. 63, v. 2, p.  
367.

**449.** Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President.<sup>2</sup> They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

Sec. 1158, R. S.

Medical officers  
not to command  
in line or  
in other staff  
departments.

Sec. 1169, R. S.

Pay officers not  
to command in  
line or in other  
staff departments.

Sec. 1183, R. S.

**450.** Officers of the Medical Department of the Army shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.<sup>3</sup>

**451.** Officers of the Pay Department shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.<sup>3</sup>

#### TACTICAL ORGANIZATIONS.

Tactical organ-  
izations.

Mar. 3, 1799, c.  
48, s. 8, v. 1, p. 752.

Sec. 1114, R. S.

**452.** In the ordinary arrangement of the Army two regiments of infantry or of cavalry shall constitute a brigade, and shall be the command of a brigadier-general, and two brigades shall constitute a division, and shall be the command of a major-general; but it shall be in the discretion of the commanding general to vary this disposition whenever he may deem it proper to do so.<sup>4</sup>

<sup>1</sup> Officers of the Regular Army, Marine Corps, and volunteers when commissioned or mustered into the service of the United States, being upon equal footing, take precedence in each grade by date of commission or appointment. Militia officers, when employed with the regular or volunteer forces of the United States, take rank next after all officers of like grade in those forces. (Par. 11, A. R., 1895.)

Between officers of the same grade and date of appointment or commission, other than through promotion by seniority, relative rank is determined by length of service, continuous or otherwise, as a commissioned officer of the United States, either in the Regular Army or, since April 19, 1861, in the volunteer forces. When periods of service are equal, precedence will, except when fixed by order of merit on examination, be determined, first, by rank in service when appointed; second, by former rank in the Army or Marine Corps; third, by lot, among such as have not been in the military service of the United States. (Par. 11, A. R., 1895.)

<sup>2</sup> An officer of Engineers or Ordnance, or of the Adjutant-General's, Inspector-General's, Judge-Advocate-General's, Quartermaster's, or Subsistence Department, or of the Signal Corps, though eligible to command, according to his rank, shall not assume command of troops unless put on duty under orders which specially so direct, by authority of the President. (Par. 17, A. R., 18.)

<sup>3</sup> An officer of the Pay or Medical Department can not exercise command, except in his own department; but by virtue of his commission he may command all enlisted men like other commissioned officers. (Par. 18, A. R., 1895.)

<sup>4</sup> Paragraph 189 of the Army Regulations of 1895 contains the provision that, in time of peace, army corps, divisions, and brigades will not be formed except for purposes of instruction. Section 9 of the act of July 17, 1862 (12 Stat. L., 594),

## MILITARY HEADQUARTERS.

453. That hereafter, in time of peace, all military head-quarters, except Army headquarters, shall be established and maintained at points where the government own buildings or barracks, within the several departments and

Military head-quarters.  
Act of June 18, 1878, s. 6, v. 20, p. 150.

authorized the President to establish and organize army corps according to his discretion. Section 10 of the same act provided for the staff of an army corps. Such legislation was not necessary, however, the organization of separate armies, army corps, grand divisions, wings, reserves, and the like, in time of war, being a matter within the discretion of the President as the Commander in Chief. For regulations respecting the organization of armies in the field in time of war, see the volume entitled *TROOPS IN CAMPAIGN*; see, also, Scott's Dig., pp. 244, 245.

## TERRITORIAL COMMANDS.

In time of peace our Army has been habitually distributed into geographical commands, styled, respectively, military divisions, departments, and districts—the districts, as organized prior to 1815, corresponding to the commands now designated as departments. These divisions and departments can be established only by the President; but, within their respective departments, commanding generals have from time to time grouped adjacent posts into temporary commands, which are now known as districts.

Military divisions, each embracing two or more departments, have obtained from May 17, 1815, to June 1, 1821; from May 19, 1837, to July 12, 1842; from April 20, 1844, to October 31, 1853; from July 25 to August 17, 1861; and from October 13, 1863, to July 2, 1891.

Department organizations have been continuous since 1815. (Scott's Dig., p. 244.)

## THE COMMANDING GENERAL OF THE ARMY.

The command exercised by the commanding general of the Army, not having been made the subject of statutory regulation, is determined by the order of assignment. It has been habitually composed of the aggregate of the several territorial commands that have been or may be created by the President.

The military establishment is under the orders of the commanding general of the Army in that which pertains to its discipline and military control. The fiscal affairs of the Army are conducted by the Secretary of War, through the several staff departments. (Par. 187, A. R., 1895.)

All orders and instructions from the President or Secretary of War relating to military operations or affecting the military control and discipline of the Army will be promulgated through the commanding general. (Par. 188, A. R. 1895.) See, also, paragraph 11, *ante*.

## TERRITORIAL DEPARTMENTS.

Territorial departments are established and their commanders assigned by direction of the President. In time of peace, army corps, divisions, or brigades will not be formed except for purposes of instruction. (Par. 189, A. R., 1895.)

The commander of a department commands all the military forces of the Government within its limits, whether of the line or staff, which are not specially excepted from his control by the War Department. The infantry and cavalry school at Fort Leavenworth, Kans., and the cavalry and light artillery school at Fort Riley, Kans., in matters pertaining to the courses of instruction; the Military Academy; the artillery school; the engineer establishment at Willets Point; the arsenals; the general depots of supply; the general-service recruiting stations; such permanent fortifications as may be in process of construction or repair, and officers employed on special duty under the Secretary of War, are exempted from the supervision of department commanders. But when an emergency demands it, all military men and material within the limits of their jurisdiction come under their control. (Par. 190, A. R., 1895.)

Purchasing commissaries, officers on duty at general depots of supply, and others indicated in the preceding paragraph, whether reporting by letter to department commanders or not, are subject to their orders for court-martial or other duty in an emergency only; and officers on duty with the commands at Fort Leavenworth, Fort Monroe, and Fort Riley will not be detached without the orders of the Secretary of War or the commanding general of the Army. (Par. 191, A. R., 1895.)

A department commander is charged with the administration of all the military affairs of his department, and the execution of all orders from higher authority. He will report to the commanding general of the Army all matters relating to the general welfare of his command, including such change of station of troops as he may deem desirable, but will obtain the approval of the commanding general of the Army before ordering the movement. If it be necessary to move troops to meet emergencies, such movements and all the circumstances will be reported at the earliest possible moment. (Par. 192, A. R., 1895.)

Each department commander will inspect the troops under his command at least once each year, and for this purpose he may be accompanied by one officer of his personal or the department staff. He will assure himself by personal examination and observation that all officers and men under his control are efficient in the performance of duty, that the troops are thoroughly drilled and instructed in their field duties and tactical exercises, that supplies are properly distributed, that proper care is exercised in the purchase and preservation of public property, and that strict economy is exercised in all public expenditures. In his annual report the results of these



divisions, and in such buildings or barracks, and not otherwise, unless the Secretary of War shall by an order in writing otherwise direct. *Sec. 6, act of June 18, 1878.*

The same.  
20 Stat. L., 150.

454. That section six of the act approved June eighteenth, eighteen hundred and seventy-eight, making appropriations for the support of the Army, be, and is hereby, repealed: *Provided*, That when the economy of the service requires, the Secretary of War shall direct the establishment of military headquarters at points where suitable buildings are owned by the government. *Act of June 23 1879 (21 Stat. L., 35).*

June 23, 1879  
v. 21, p. 35.

inspections will be summarized. From time to time he will report, for the information of the commanding general of the Army and the Secretary of War, the names of any and all officers belonging to his command who are believed to be incompetent or permanently unable, from any cause, to perform all the duties of their several grades, both in garrison and in active service; he will also report any errors, irregularities, or abuses requiring the action of higher authority. (Par. 193. A. R., 1895.)

Department commanders are expected to determine controversies arising within the limits of their jurisdiction and decide questions referred to them on appeal. (Par. 194. A. R., 1895.)

Although a department commander may continue to discharge the more important functions of his command while beyond its territorial limits, his absence therefrom requires the sanction of the Secretary of War, and if intending to leave his headquarters for an absence within his department, he will report to the Adjutant-General of the Army his intention, the duration of, and his address during, his proposed absence. (Par. 195. A. R., 1895.)

#### STAFF OF DEPARTMENT COMMANDERS.

The personal staff of a department commander will consist of the authorized aids. The department staff will be limited to the officers detailed by the Secretary of War from appropriate staff departments or corps, or of officers of the line detailed by the same authority to act in their stead, and their official designations will be as follows: Adjutant-general, chief quartermaster, chief commissary, chief surgeon, chief paymaster, judge-advocate, and artillery inspector, the last appointed as prescribed in paragraph 350; also, when necessary, an engineer officer, an ordnance officer, and a signal officer, each detailed from his corps; but when any of these officers are not assigned, or when any department staff officer is temporarily absent or disabled, the duties of his position will be performed by other members of the department or personal staff. The chief quartermaster and chief commissary will each have charge of the depot of his department, at the place where headquarters are located, and will, when practicable, make purchases. The chief surgeon will, when practicable, perform the duty of attending surgeon. The chief paymaster will make a proportion of the payments in the command. The duties prescribed in Small-Arms Firing Regulations for the inspector of small-arms practice will be performed by an aid or by the adjutant-general. (Par. 196. A. R., 1895.)

## CHAPTER XIII.

### THE STAFF DEPARTMENTS—GENERAL PROVISIONS—DISBURSING OFFICERS.

#### APPOINTMENTS.

Par.	Par.
455. Chiefs of departments appointed by selection.	461. Officers appointed from civil life may waive board or similar character.
456. Vacancies in staff, how filled.	462. Examination of certain officers of Engineers and Ordnance.
457. Promotions.	463. Transfers between line and staff.
458. Promotions to be by seniority, subject to examination.	464. Transfers of Engineer officers.
459. Examinations for promotion. Retirement on failure to pass due to physical disability contracted in line of duty. Failure for other reasons. Failure on re-examination.	465. Successor to absent chief of bureau to be designated by the President.
460. Examination of officers appointed from civil life. Composition of boards. Failure.	

455. The Adjutant-General, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Chief of Engineers, the Chief of Ordnance, and the Paymaster-General shall be appointed by selection from the corps to which they belong.<sup>1</sup>

456. Hereafter all appointments to fill vacancies in the lowest grade of the Adjutant-Generals, Inspector-Generals, Quartermasters and Subsistence Departments respectively shall be made from the next lowest grade in the line of the Army.<sup>2</sup> *Act of August 6, 1894 (28 Stat. L., 234).*

<sup>1</sup>The act of February 5, 1885 (23 Stat. L., 297), provides that the Inspector-General shall be appointed, by selection, from the officers of the Inspector-General's Department. The act of August 6, 1894 (28 Stat. L., 234), makes a similar provision in respect to the Chief Signal Officer.

<sup>2</sup>For statutory provisions respecting appointments in the Medical, Ordnance, and Signal Departments see the chapters so entitled.

Chiefs of departments appointed by selection. July 28, 1866, c. 299, s. 23, v. 14, p. 336.

Sec. 1193, R. S.

Vacancies in staff, how filled. Aug. 6, 1894, v. 28, p. 234.

## PROMOTIONS.

Promotions. **457.** Promotions in the line shall be made through the whole Army, in its several lines of artillery, cavalry and infantry, respectively. Promotions in the staff shall be made in the several departments and corps respectively.<sup>1</sup>

## EXAMINATIONS FOR PROMOTION.

Promotion to be by seniority, subject to examination. **458.** Hereafter promotion to every grade in the Army below the rank of brigadier-general, throughout each arm, corps, or department of the service, shall, subject to the examination hereafter provided for, be made according to seniority in the next lower grade of that arm, corps, or department. *Act of October 1, 1890 (26 Stat. L., 562).* (See *Sec. 1204, R. S., par. 457, supra.*)

Examinations for promotion. **459.** That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the Army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: *Provided*, That the President may waive the examination for promotion to any grade in the case of any officer who in pursuance of existing law has passed a satisfactory examination for such grade prior to the passage of this act: *And provided*, That if any officer fails to pass a satisfactory examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination and be found incapacitated for service by reason of physical disability contracted in line of duty he shall be retired with the rank

Retirement on failure to pass due to physical disability contracted in line of duty.

<sup>1</sup> See, also, section 1 of the act of October 1, 1890 (26 Stat. L., 252). So much of section 1194, Revised Statutes, as prohibited appointments and promotions in the Adjutant-General's, Inspector-General's, Pay, Quartermaster's, Subsistence, Ordnance, and Medical Departments, was repealed; as to the Adjutant-General's Department, by the act of March 3, 1875 (18 Stat. L., 478); as to the Inspector-General's Department, by the act of June 23, 1874 (18 Stat. L., 244); as to the grade of major in the Pay Department, by the act of March 3, 1875 (18 Stat. L., 524), and the act of March 3, 1877 (19 Stat. L., 270); as to the Quartermaster's Department, by the act of March 3, 1875 (18 Stat. L., 338); as to the Ordnance, Subsistence, and Medical Departments, by section 8 of the act of June 23, 1874 (18 Stat. L., 245). The act of March 3, 1877 (19 Stat. L., 270), declared that this section "now applying only to the grades in the Pay Department of the Army above the rank of major is hereby repealed" (19 Stat. L., 270).

The act of June 23, 1874, contained the provision that as vacancies shall occur in any of the grades of the Ordnance and Medical Departments, no appointments shall be made to fill the same until the numbers in such grade shall be reduced to the numbers which are fixed for permanent appointments by the provisions of this act; and thereafter the number of permanent officers in said grades shall continue to conform to said reduced numbers, and all other grades in said Ordnance and Medical Departments than those authorized by the provisions of this act shall cease to exist as soon as the same shall become vacant by death, resignation, or otherwise; and no appointment or promotion shall hereafter be made to fill any vacancy which may occur therein.

The same statute also provided that no officer now in the service shall be reduced in rank or mustered out by reason of any provision of law herein made reducing the number of officers in any department or corps of the staff.

to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army.

Failure for other reasons.

Failure on re-examination.

460. That the examination of officers appointed in the Army from civil life, or of officers who were officers of volunteers only, or were officers of the militia of the several States called into the service of the United States, or were enlisted men in the regular or volunteer service, either in the Army, Navy, or Marine Corps, during the war of the rebellion, shall be conducted by boards composed entirely of officers who were appointed from civil life or of officers who were officers of volunteers only during said war, and such examination shall relate to fitness for practical service and not to technical and scientific knowledge; and in case of failure of any such officer in the reexamination hereinbefore provided for, he shall be placed upon the retired list of the Army; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for. *Sec. 3, act of October 1, 1890* (26 Stat. L., 562).

Examination of officers appointed from civil life, etc. Sec. 3, *ibid.*

Composition of boards.

461. That officers entitled by this section to examination by a board composed entirely of officers who were appointed from civil life, or who were officers of volunteers only during the war, may, by written waiver filed with the War Department, relinquish such right, in which case the examination of such officers shall be conducted by boards composed as shall be directed by the Secretary of War. *Act of July 27, 1892* (27 Stat. L., 276).

Failure.

Officers appointed from civil life may waive board of similar character. July 27, 1892, v. 27, p. 276.

462. That the examination of officers of the Corps of Engineers and Ordnance Department, who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the war of the rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps or department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers and Ordnance Department, respectively. *Sec. 2, act of July 27, 1892* (27 Stat. L., 276).

Examination of certain officers of Engineers and Ordnance. Sec. 2, July 27, 1892, v. 27, p. 276.

#### TRANSFERS TO THE STAFF.

463. Officers may be transferred from the line to the staff of the Army without prejudice to their rank or promotion in the line; but no officer shall hold, at the same

Transfers between line and staff.

Sec. 1205, R. S.

time, an appointment in the line and an appointment in the staff which confer equal rank in the Army. When any officer so transferred has, in virtue of seniority, obtained, or become entitled to, a grade in his regiment equal to the grade of his commission in the staff, he shall vacate either his commission in the line or his commission in the staff.

Transfers of  
engineer officers.

Sec. 1158, R. S.

**464.** Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President. They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

#### MISCELLANEOUS.

Successor to  
absent chief of  
bureau to be des-  
ignated by the  
President.

Sec. 1132, R. S.

**465.** During the absence of the Quartermaster-General, or the chief of any military bureau of the War Department, the President is authorized to empower some officer of the Department or Corps whose chief is absent to take charge thereof, and to perform the duties of Quartermaster-General, or chief of the department or corps, as the case may be, during such absence.

#### DISBURSING OFFICERS.

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| Par.  | Par.   |
| 466. Bonds of disbursing officers; by whom to be given.   | 477. Sureties released after five years without suit.      |
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| 473. Forfeiture of rights on failure to pay judgments.  | 484. Penalty for failure to deposit money.                 |
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| Par.  | Par.  |
| 492. Appropriations for subsistence available for purchases of stores for sale to officers, etc. Proceeds of sales available for similar purchases. | 501. Custodians of public money failing to safely keep, without loaning, etc. |
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| 499. Disbursing officer unlawfully depositing, converting, loaning, or transferring public money.   | 508. Unlawful receiving of money by banker, etc., to be embezzlement.         |
| 500. Failure of Treasurer, etc., to safely keep public moneys.  | 509. Officers, etc., interested in claims.                                    |
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|   | 511. Forfeiture of office.  |
|   | 512. Officer contracting beyond specific appropriation.                       |
|   | 513. Fraudulent notes to be stamped "counterfeit."                            |

## BONDS.

**466.** All officers of the Quartermaster's, Subsistence, and Pay Departments, the chief medical purveyor and assistant medical purveyors, and all store-keepers shall, before entering upon the duties of their respective offices, give good and sufficient bonds to the United States, in such sums as the Secretary of War may direct, faithfully to account for all public moneys and property which they may receive. The President may, at any time, increase the sums so prescribed.<sup>1</sup> But the Quartermaster-General shall not be liable for any money or property that may come into the hands of the subordinate officers of his department.

**467.** That whenever any recognizance, stipulation, bond, or undertaking conditioned for the faithful performance of any duty, or for doing or refraining from doing anything in such recognizance, stipulation, bond, or undertaking specified, is by the laws of the United States required or

Bonds of disbursing officers; by whom given.

Apr. 24, 1816, c.

69, s. 6, v. 3, p. 298;

June 17, 1846, c.

28, s. 2, v. 9, p. 17;

Mar. 3, 1857, c. 106,

s. 2, v. 11, p. 203;

Aug. 23, 1842, c.

186, s. 2, v. 5, p.

512; July 28, 1866,

c. 299, s. 17, v. 14,

p. 334; May 15,

1820, c. 102, s. 3, v.

3, p. 582; July 17,

1862, c. 201, s. 16,

v. 12, p. 600; Feb.

27, 1877, v. 19, p.

243.

Sec. 1191, R.S.

Security companies as sure-

ties.

Aug. 13, 1894, v.

28, p. 279.

<sup>1</sup> For statutory requirements respecting bonds and sureties, in addition to those cited in this chapter, see the chapters entitled THE TREASURY DEPARTMENT, THE COURT OF CLAIMS, THE QUARTERMASTER'S DEPARTMENT, THE SUBSISTENCE DEPARTMENT, THE PAY DEPARTMENT, THE MEDICAL DEPARTMENT, and CONTRACTS AND PURCHASES. Officers of the Army and Navy are excepted from the provisions of section 3614, Revised Statutes, which require all special agents employed by the heads of the several Executive Departments in the disbursement of the public moneys to give bonds in such form and with such security as such heads of Departments may approve. This section does not apply to all commissioned officers of the Army who may be required to act as disbursing officers, but to such only as are regularly appointed disbursing officers and who are required, as such, to give bonds. Ex parte Randolph, 2 Brockenbrough, 447. See also U. S. v. Kirkpatrick, 9 Wh., 720; U. S. v. Van Zandt, 11 Wh., 184; Dox v. Postmaster-General, 1 Pet., 325; U. S. v. Linn, 15 Pet., 290. See, also, Par. 515 post.

permitted to be given with one surety or with two or more sureties, the execution of the same or the guaranteeing of the performance of the condition thereof shall be sufficient when executed or guaranteed solely by a corporation incorporated under the laws of the United States or of any State having power to guarantee the fidelity of persons holding positions of public or private trust, and to execute and guarantee bonds and undertakings in judicial proceedings: *Provided*, That such recognizance, stipulation, bond, or undertaking be approved by the head of department, court, judge, officer, board, or body executive, legislative, or judicial required to approve or accept the same. But no officer or person having the approval of any bond shall exact that it shall be furnished by a guarantee company or by any particular guarantee company. *Act of August 13, 1894 (28 Stat. L., 279).*

Agents to be appointed in judicial district where surety is undertaken.  
Sec. 2, *ibid.*

**468.** That no such company shall do business under the provisions of this act beyond the limits of the State or Territory under whose laws it was incorporated and in which its principal office is located nor beyond the limits of the District of Columbia, when such company was incorporated under its laws or the laws of the United States and its principal office is located in said District, until it shall by a written power of attorney appoint some person residing within the jurisdiction of the court for the judicial district wherein such suretyship is to be undertaken, who shall be a citizen of the State, Territory, or District of Columbia, wherein such court is held, as its agent, upon whom may be served all lawful process against such company, and who shall be authorized to enter an appearance in its behalf. A copy of such power of attorney, duly certified and authenticated, shall be filed with the clerk of the district court of the United States for such district at each place where a term of such court is or may be held, which copy, or a certified copy thereof, shall be legal evidence in all controversies arising under this act. If any such agent shall be removed, resign, or die, become insane, or otherwise incapable of acting, it shall be the duty of such company to appoint another agent in his place, as hereinbefore prescribed, and until such appointment shall have been made, or during the absence of any agent of such company from such district, service of process may be upon the clerk of the court wherein such suit is brought, with like effect as upon an agent appointed by the company. The officer executing such process upon such clerk shall immediately transmit a copy thereof by mail to the company, and state such fact in his return. A judgment, decree, or order of a court entered or made after service of process as aforesaid

shall be as valid and binding on such company as if served with process in said district. *Sec. 2, ibid.*

469. That every company before transacting any business under this act shall deposit with the Attorney-General of the United States a copy of its charter or articles of incorporation, and a statement signed and sworn to by its president and secretary showing its assets and liabilities. *Sec. 3, ibid.*

Copy of charter to be filed with Attorney-General.  
*Sec. 3, ibid.*

470. If the said Attorney-General shall be satisfied that such company has authority under its charter to do the business provided for in this act, and that it has a paid up capital of not less than two hundred and fifty thousand dollars, in cash or its equivalent, and is able to keep and perform its contracts, he shall grant authority in writing to such company to do business under this act. *Sec. 3, ibid.*

Attorney-General to grant authority to act.  
*Sec. 3, ibid.*

471. That every such company shall, in the months of January, April, July, and October of each year, file with the said Attorney-General a statement, signed and sworn to by its president and secretary, showing its assets and liabilities, as is required by section three of this act. And the said Attorney-General shall have the power, and it shall be his duty, to revoke the authority of any such company to transact any new business under this act whenever in his judgment such company is not solvent or is conducting its business in violation of this act. He may institute inquiry at any time into the solvency of said company and may require that additional security be given at any time by any principal when he deems such company no longer sufficient security. *Sec. 4, ibid.*

Quarterly reports. Supervisory powers of Attorney-General.  
*Sec. 4, ibid.*

472. That any surety company doing business under the provisions of this act may be sued in respect thereof in any court of the United States which has now or hereafter may have jurisdiction of actions or suits upon such recognizance, stipulation, bond, or undertaking in the district in which such recognizance, stipulation, bond, or undertaking was made or guaranteed, or in the district in which the principal office of such company is located. And for the purposes of this act such recognizance, stipulation, bond, or undertaking shall be treated as made or guaranteed in the district in which the office is located, to which it is returnable, or in which it is filed, or in the district in which the principal in such recognizance, stipulation, bond, or undertaking resided when it was made or guaranteed. *Sec. 5, ibid.*

Jurisdiction of United States courts.  
*Sec. 5, ibid.*

473. That if any such company shall neglect or refuse to pay any final judgment or decree rendered against it upon any such recognizance, stipulation, bond, or undertaking made or guaranteed by it under the provisions of this act,

Forfeiture of rights on failure to pay judgment.  
*Sec. 6, ibid.*



from which no appeal, writ of error, or supersedeas has been taken, for thirty days after the rendition of such judgment or decree, it shall forfeit all right to do business under this act. *Sec. 6, ibid.*

Companies es-  
topped from de-  
nying power.  
*Sec. 7, ibid.*

474. That any company which shall execute or guarantee any recognizance, stipulation, bond, or undertaking under the provisions of this act shall be estopped in any proceeding to enforce the liability which it shall have assumed to incur, to deny its corporate power to execute or guarantee such instrument or assume such liability. *Sec. 7, ibid.*

Penalty for  
failure to com-  
ply with provi-  
sions.  
*Sec. 8, ibid.*

475. That any company doing business under the provisions of this act which shall fail to comply with any of its provisions shall forfeit to the United States for every such failure not less than five hundred dollars nor more than five thousand dollars, to be recovered by suit in the name of the United States in the same courts in which suit may be brought against such company under the provisions of this act, and such failure shall not affect the validity of any contract entered into by such company. *Sec. 8, ibid.*

Sureties on offi-  
cial bonds.

Notice of prin-  
cipal's deficiency  
to be communi-  
cated to sureties.

Aug. 8, 1888, v.  
25, p. 287.

476. That hereafter, whenever any deficiency shall be discovered in the accounts of any official of the United States, or of any officer disbursing or chargeable with public money, it shall be the duty of the accounting officers making such discovery to at once notify the head of the Department having control over the affairs of said officer of the nature and amount of said deficiency, and it shall be the immediate duty of said head of Department to at once notify all obligors upon the bond or bonds of such official of the nature of such deficiency and the amount thereof. Said notification shall be deemed sufficient if mailed at the post-office in the city of Washington, District of Columbia, addressed to said sureties respectively, and directed to the respective post-offices where said obligors may reside, if known; but a failure to give or mail such notice shall not discharge the surety or sureties upon such bond.<sup>1</sup> *Act of August 8, 1888 (25 Stat. L., 387).*

Sureties re-  
leased after five  
years without  
suit.

*Sec. 2, ibid.*

477. That if, upon the statement of the account of any official of the United States, or of any officer disbursing or chargeable with public money, by the accounting officers of the Treasury, it shall thereby appear that he is indebted to the United States, and suit therefor shall not be instituted within five years after such statement of said account, the sureties on his bond shall not be liable for such indebtedness.<sup>2</sup> *Sec. 2, ibid.*

<sup>1</sup> The regulations of the Treasury Department are imperative, and expressly prohibit the transfer of funds, of any character, for which an officer is accountable, from one bond to another, and when this regulation is violated it becomes necessary for the officer to deposit the sum transferred, as a credit to his first bond, or else procure the admission of the sureties on the second bond that the officer actually had the sum in hand when it was executed, and that they are liable on said bond for the same. (3 Dig. Compt. Dec., 13.)

<sup>2</sup> For statutory provisions respecting distress warrants, see the chapter entitled THE TREASURY DEPARTMENT.

## INSPECTION OF DISBURSEMENTS.

**478.** It shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money; also to ascertain whether the disbursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the inspection department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement.<sup>1</sup> *Act of April 20, 1874, (18 Stat. L., 33).*

Inspection of disbursements.  
Apr. 20, 1874,  
v. 18, p. 33.

**479.** That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War. *Sec. 2, ibid.*

To be reported to Congress.  
Sec. 2, *ibid.*

## RECEIPTS, DEPOSITS, AND DISBURSEMENTS.

**480.** All moneys appropriated for the use of the War and Navy Departments shall be drawn from the Treasury, by warrants of the Secretary of the Treasury, upon the requisitions of the Secretaries of those Departments respectively, countersigned by the Comptroller of the Treasury, and registered by the proper Auditor.

Drafts for War and Navy Departments.  
Mar. 3, 1817, v. 3, p. 367; May 7, 1822, v. 3, p. 689; Mar. 4, 1874, v. 18, p. 19.

Sec. 3673, R. S.

**481.** No advance of public money shall be made in any case whatever. And in all cases of contracts for the performance of any service, or the delivery of articles of any description, for the use of the United States, payment shall not exceed the value of the service rendered, or of the articles delivered previously to such payment.<sup>2</sup> It shall, however, be lawful, under the special direction of the President, to make such advances to the disbursing officers of the Government as may be necessary to the faithful and prompt discharge of their respective duties, and to the fulfillment of the public engagements. The President may also direct such advances as he may deem necessary and proper to persons in the military and naval service employed on distant stations, where the discharge of the pay and emoluments to which they are entitled cannot be regularly effected.

Advances of public money prohibited.  
Jan. 31, 1823, v. 3, p. 723.

Sec. 3648, R. S.

**482.** No exchange of funds shall be made by any disbursing officer or agent of the Government, of any grade

Exchange of funds restricted.  
Aug. 6, 1846, c. 90, s. 20, v. 9, p. 61; Feb. 22, 1862, c. 33, s. 1, v. 12, p. 345; July 11, 1862, c. 142, s. 1, v. 12, p. 532; Mar. 3, 1863, c. 73, s. 3, v. 12, p. 710; June 3, 1864, c. 106, s. 23, v. 13, p. 106.

Sec. 3651, R. S.

<sup>1</sup> See paragraph 871, A. R., 1895.

<sup>2</sup> In the case of disbursing officers the policy of the Government has been to acknowledge no payments as made on its behalf save those which are authorized by law. If an officer makes a mistake of law the payment is disallowed when his accounts come in for settlement, and charged to him as if the money were still in his hands. *McKim v. U. S.*, 12 C. Cls. R., 504, 532. Such officers are special agents with very limited authority. Their duties are ministerial; they are to pay the money according to the law and the facts in each case, and if they make mistakes in either they are personally liable themselves, and the Government may, also, without doubt, maintain an action to recover back the money from the person wrongfully receiving it. No discretion or authority to decide controverted questions of law is intrusted to such officers. See dissenting opinion of Richardson, J., in *McKee v. U. S.*, 12 C. Cls. R., 504, 551.

or denomination whatsoever, or connected with any branch of the public service, other than an exchange for gold, silver, United States notes, and national-bank notes; and every such disbursing officer, when the means for his disbursements are furnished to him in gold, silver, United States notes, or national-bank notes, shall make his payments in the money so furnished; or when they are furnished to him in drafts, shall cause those drafts to be presented at their place of payment, and properly paid according to law, and shall make his payments in the money so received for the drafts furnished, unless, in either case, he can exchange the means in his hands for gold and silver at par. And it shall be the duty of the head of the proper Department immediately to suspend from duty any disbursing officer or agent who violates the provisions of this section, and forthwith to report the name of the officer or agent to the President, with the fact of the violation, and all the circumstances accompanying the same, and within the knowledge of the Secretary, to the end that such officer or agent may be promptly removed from office or restored to his trust and the performance of his duties, as the President may deem just and proper.<sup>1</sup>

Premium on sales of public moneys to be accounted for.

Aug. 6, 1846, c. 90, s. 21, v. 9, p. 65.

Sec. 3652, R. S.

Penalty for failure to deposit money.

Mar. 3, 1857, c. 114, s. 3, v. 11, p. 249; s. 5, May 28, 1896, v. 29, p. 179.

Sec. 3621, R. S.

**483.** No officer of the United States shall, either directly or indirectly, sell or dispose of to any person, for a premium, any Treasury note, draft, warrant, or other public security, not his private property, or sell or dispose of the avails or proceeds of such note, draft, warrant, or security, in his hands for disbursement, without making return of such premium, and accounting therefor by charging the same in his accounts to the credit of the United States; and any officer violating this section shall be forthwith dismissed from office.

**484.** Every person who shall have moneys of the United States in his hands or possession and disbursing officers having moneys in their possession not required for current expenditure, shall pay the same to the Treasurer, an assistant treasurer, or some public depositary of the United States, without delay, and in all cases within thirty days of their receipt. And the Treasurer, the Assistant Treasurer, or the public depositary shall issue duplicate receipts for the moneys so paid, transmitting, forthwith, the original to the Secretary of the Treasury, and delivering the duplicate to the depositor.<sup>2</sup> *Sec. 5, act of May 28, 1896 (29 Stat. L., 179).*

<sup>1</sup> U. S. v. City Bank, 6 McLean, 130.

<sup>2</sup> DISBURSING OFFICERS.

When an officer disburses money in different capacities, his deposits and accounts will be kept distinct, according to the bureaus to which they pertain. (Par. 583, A. R., 1895.)

Public moneys subject to disbursement coming into the hands of an officer from any source must be promptly placed by him to his credit with the Treasurer or an assistant treasurer of the United States, or a duly designated depositary, or transferred to a disbursing officer of that branch of the public service to which the money pertains; in either of which cases a receipt will be obtained. Exceptions to this rule

**485.** The Treasurer of the United States, all assistant treasurers, and those performing the duties of assistant treasurer \* \* \* and all public officers of whatsoever character, are required to keep safely, without loaning, using, depositing in banks, or exchanging for other funds than as specially allowed by law, all the public money collected by them, or otherwise at any time placed in their possession and custody, till the same is ordered, by the proper Department or officer of the Government, to be transferred or paid out; and when such orders for transfer or payment are received, faithfully and promptly to make the same as directed, and to do and perform all other duties as fiscal agents of the Government which may be imposed by any law, or by any regulation of the Treasury Department made in conformity to law. The President is authorized, if in his opinion the interest of the United States requires the same, to regulate and increase the sums for which bonds are, or may be, required by law, of all district attorneys, collectors of customs, naval officers, and surveyors of customs, navy agents, receivers and registers of public lands, paymasters in the Army, commissary-general, and by all other officers employed in the disbursement of the public moneys, under the direction of the War or Navy Departments. (*See secs. 5489-5497, R. S.*)

Duties of officers as custodians of public moneys.

Aug. 6, 1846, c. 90, s. 6, v. 9, p. 60; July 3, 1852, c. 54, s. 7, v. 10, p. 12; Mar. 3, 1857, c. 114, s. 2, v. 11, p. 249; Apr. 21, 1862, c. 59, s. 5, v. 12, p. 382; Mar. 3, 1863, c. 96, s. 5, v. 12, p. 770; July 4, 1864, c. 24, s. 5, v. 13, p. 383; Feb. 18, 1869, c. 33, s. 4, v. 15, p. 271.

Sec. 3639, R. S.

**486.** It shall be the duty of every disbursing officer having any public money intrusted to him for disbursement, to deposit the same with the Treasurer or some one of the

Duties of disbursing officers.

June 14, 1866, c. 122, s. 1, v. 14, p. 64; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3620, R. S.

are allowed where a disbursing officer has been specially authorized by the Secretary of War to keep in his personal possession, at his own risk, the public moneys which have been intrusted to him for disbursement, and money in hand may be disbursed at once without being placed in depositories if payments are due. The amount of subsistence funds which a commissary may keep in his personal possession, at his own risk, is stated in orders from the War Department. (Par. 584, *ibid.*)

A disbursing officer ceasing to act as such and having public funds to his credit in any office or bank will at once inform the Secretary of the Treasury, stating what checks drawn against the same are still outstanding and unpaid. (Par. 585, *ibid.*)

No officer disbursing money for the military service, or directing the disbursement thereof, shall be concerned individually, directly or indirectly, in the purchase or sale of any article intended for, used by, or pertaining to the department of the public service in which he is engaged. (Par. 587, A. R., 1895.)

No officer or clerk of a disbursing officer shall be interested in the purchase of any soldier's certificate of pay due or any other claim against the United States. (Par. 588, *ibid.*)

Officers or agents in the military service will not purchase supplies for the Government from any other person in the military service, nor contract with any such person to furnish supplies or service to the Government, nor make any Government purchase or contract in which such person shall be admitted to share or receive benefit. (Par. 589, *ibid.*)

Every disbursing officer, in opening his first account and before issuing any checks, will furnish the depository on whom the checks are to be drawn with his official signature, duly verified by some officer whose signature is known to the depository. (Par. 591, *ibid.*)

For every Treasury draft received by a depository to be placed to the official credit of a disbursing officer, and for every deposit of funds made by the officer to his official credit, subject to payment of his checks, a receipt, numbered in serial order and giving the place and date of issue, will be furnished him by the depository, setting forth the character of the funds, i. e., whether coin or currency. If the credit is made by a disbursing officer's check transferring funds, the essential items of the check will be enumerated, and if by a Treasury draft, the warrant number. The title of the officer will be expressed, and the title of the account will also show for what branch of the public service it is kept. The receipt, called "a disbursing officer's receipt," will be retained by the officer in whose favor it is made. (Par. 592, *ibid.*)

It is within the power of the accounting officers, in the settling of accounts of disbursing officers, where it appears that an expenditure has been made from the wrong appropriation, if the expenditure be right in itself and correct otherwise, to charge the amount to the appropriation for which the expenditure is liable. If at

assistant treasurers of the United States, and to draw for the same only as it may be required for payments to be made by him in pursuance of law; and draw for the same only in favor of the persons to whom payment is made; and all transfers from the Treasurer of the United States to a disbursing officer shall be by draft or warrant on the Treasury or an assistant treasurer of the United States. In places, however, where there is no treasurer or assistant treasurer, the Secretary of the Treasury may, when he deems it essential to the public interest, specially authorize in writing the deposit of such public money in any other public depository, or, in writing, authorize the same to be kept in any other manner, and under such rules and regulations as he may deem most safe and effectual to facilitate the payments to public creditors. (*See sec. 5488, R. S.*)

Entry of each deposit, transfer, and payment.

Aug. 6, 1846, c. 90, s. 10, v. 9, p. 63.

Sec. 3643, R. S.

Applications of moneys appropriated.

Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.

Feb. 16, 1868, c. 8, s. 2, v. 15, p. 36.

Sec. 3678, R. S.

No expenditures beyond appropriations.

July 12, 1870, c. 251, s. 7, v. 16, p. 251.

Sec. 3679, R. S.

**487.** All persons charged by law with the safe keeping, transfer, and disbursement of the public moneys, other than those connected with the Post Office Department, are required to keep an accurate entry of each sum received and of each payment or transfer.

**488.** All sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made and for no others.

**489.** No Department of the Government shall expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, or involve the Government in any contract for the future payment of money in excess of such appropriations. (*See secs. 3733, 5503, 3732, R. S.*)

the time of the settlement the appropriation to which the expenditure is chargeable is exhausted, the amount should be disallowed against the disbursing officer, and he should be required to apply to Congress for relief. (3 Dig. Compt. Dec., 36.)

Where one Department receives from another Department supplies which are within the scope of appropriations belonging to each a reimbursement of the appropriation of the one from the appropriation of the other, of the cost of the supplies, is not a violation of section 3678, Revised Statutes; nor do the provisions of section 3618, Revised Statutes, apply to such case. (17 Opin. Att. Gen., 480.)

#### PECUNIARY RESPONSIBILITY OF OFFICERS.

An officer will have credit for an expenditure of money made in obedience to the order of his commanding officer. Every order issued by any military authority which may cause an expenditure of money in a staff department will be given in writing. One copy thereof will be forwarded by the officer receiving it to the head of his department, and the other will be filed by the disbursing officer with his voucher for the disbursement. If the expenditure be disallowed it will be charged to the officer who ordered it. (Par. 653, A. R., 1895.)

Where purchases of army supplies are made in pursuance of an order issued by competent military authority, said order, or a certified copy thereof, should be filed with the first voucher on which payment for supplies is made and reference be made thereto on all the others. (3 Dig. Compt. Dec., 1, 287.)

In questions of illegal expenditures made by an officer of the Army in obedience to his superior, the paragraph of the Army Regulations which provides that an officer shall have credit for an expenditure of money or property made in obedience to the order of his commanding officer, and that if the expenditure is disallowed it shall be charged to the officer who ordered it, will, as a rule, be followed in determining which officer is to be held liable. Where there is a plain direction or prohibition spread upon the statute books, which is as well known to an inferior as to a superior officer, it is clearly binding upon both officers and, unless it can be affirmatively shown that the inferior called the attention of the superior officer to the infringement of law in the order, and that thereupon the superior renewed the order, the inferior officer must be held liable. (3 *ibid.*, 147.)

If a payment made on the certificate of an officer as to the facts is afterwards

## PROCEEDS OF SALES.

## MISCELLANEOUS RECEIPTS.

490. The gross amount of all moneys received from whatever source for the use of the United States, except as otherwise provided in the next section, shall be paid by the officer or agent receiving the same into the Treasury, at as early a day as practicable, without any abatement or deduction on account of salary, fees, costs, charges, expenses, or

Proceeds of sales to be deposited without deduction.  
Mar. 3, 1849, c. 110, s. 1, v. 9, p. 398; Sept. 28, 1850, c. 78, s. 3, v. 9, p. 507.

Sec. 3617, R. S.

disallowed for error of fact in the certificate, it will pass to the credit of the disbursing officer and be charged to the officer who gave the certificate; but the disbursing officer can not protect himself in an erroneous payment made without due care by charging lack of care against the officer who gave the certificate. (Par. 654, A. R., 1895.)

Paragraph 736 of the Army Regulations of 1884 (par. 736, A. R., 1895) provides that accounts paid on a certificate and afterwards disallowed for error of fact in the certificate shall pass to the credit of the disbursing officer and be charged to the officer who gave the certificate. *Held*, that it is the duty, however, of the disbursing officer to exercise the utmost care and vigilance in the disbursement of the public funds intrusted to him and it is his imperative duty to see that the entire amount claimed is due and that payment thereof is fully warranted from the data given on the muster roll or final statement. If the information is not sufficient he must seek for more. He can not protect himself in an erroneous payment made without due care, by charging a similar lack of care against the officer who gave the certificate. (3 Dig. Compt. Dec., 10.)

MONEY VOUCHERS. *a*

Vouchers will ordinarily be made in duplicate, or, if required, in triplicate, and the number made will be stated on each copy. (Par. 631, A. R., 1895.)

The correctness of the facts stated on a voucher and the justness of the account must be certified by an officer. (Par. 632, A. R., 1895.)

Every voucher in support of a payment for supplies, or for services other than by the day or month, whether it be made pursuant to a formally prepared contract, an accepted bid, or a purchase without advertising (unless it comes within the excepted cases provided for in the following paragraph), must have attached to it an original bill (*b*) furnished by the creditor, dated and signed by him or his authorized representative, giving his place of business or residence, and stating (if for supplies furnished) the date of the purchase the quantity and price of each article and the amount or (if for services other than by the day or month) the character of the services, the date or dates on which rendered, and the amount. A voucher so accompanied will be made out in favor of the creditor, giving his address, and may state the account in general terms, with the aggregate amount only extended, and the words "as per bill hereto attached," or words of like import, added. Where a purchase under an accepted bid after public notice is made in the Quartermaster's or Subsistence Department, the voucher, besides being subject to the foregoing requirements, will be accompanied by a copy of the public notice, the accepted bid, and a copy of the letter accepting the bid, and must contain a certificate that the award was made to the lowest responsible bidder for the best and most suitable articles, and that the needs of the service required the purchase to be made in the manner indicated by the public notice. Where papers relating to two or more vouchers are required to accompany accounts, they must be filed with the first voucher paid and reference thereto made on the other vouchers. A voucher for services by the day or month must state the nature of the service, the inclusive dates of service, the time for which payment is made, the rate of pay, and the amount. (Par. 633, *ibid*.)

When a creditor is unable for any cause to make out his bill, or to have it made out, the disbursing officer must set forth on the voucher all the details of the account, as required for the bill by the preceding paragraph, and must give reasons in full on the voucher why a bill is not furnished. Original bills need not be attached to vouchers in the following cases, *viz*: Where, under a contract, quantities delivered or amounts due are determined by a duly authorized inspector, and his certificate as to the facts is filed with the voucher to which it pertains; where a bill of lading or transportation request accompanies a voucher for transportation services performed under public tariffs; where a voucher is for telegraphic services at rates fixed by the Postmaster General; where a voucher is for services by the day or month, or where a creditor makes out his bill on a blank form of voucher and certifies to its correctness. (Par. 634, *ibid*.)

The giving or taking of receipts in blank for public money is prohibited. (Par. 637, *ibid*.)

A voucher for funds disbursed will, before being signed by a public creditor, be

*a*. The word "voucher" can not be construed as synonymous with the word "receipt," it having a far broader signification in law. Any written evidence which establishes facts entitling a disbursing officer to credit is a voucher. "The word 'voucher' would seem to imply evidence, written or otherwise, of the truth of a fact." (The People *v*. Green, 5 Daly, N. Y., 194; 3 Dig. Compt. Dec., 378.)

*b*. All vouchers rendered by disbursing officers or agents of the Engineer, Quartermaster's, and Subsistence Departments for purchases or services not under contract, excepting services by the day or month, must be accompanied by the original bills for the same, furnished by the person, firm, or corporation from whom the purchase was made or by whom the service was rendered. In case any bill pertains to more than one voucher, it should be filed with the first and reference made thereto on each of the others. (3 Compt. Dec., 381.)

claim of any description whatever.<sup>1</sup> But nothing herein shall affect any provision relating to the revenues of the Post-Office Department.

Proceeds of sales of materials.

May 3, 1872, c. 140, s. 5, v. 17, p. 83; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; July 28, 1866, c. 299, s. 25, v. 14, p. 336; June 8, 1872, c. 348, v. 17, p. 337; Feb. 27, 1877, v. 19, p. 249.

Sec. 3618, R. S.

**491.** All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue-cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers or soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and shall

made out in full, with the place of payment and the name, rank, regiment, or corps of the paying officer entered in the receipt, and the exact amount of money written out in words in the receipt. When vouchers are sent by mail for signature the date in the receipt will be left blank, and the check in payment will not be drawn until the vouchers are returned, properly signed, when the date of the check will be added to the receipt. *a* (Par. 630, *ibid.*)

An order from the court appointing a receiver and showing his authority to act as such should be filed with or referred to in every voucher or claim presented by him for payment. (3 Dig. Compt. Dec., 378.)

The term "small amounts," as used in the Second Comptroller's decision of March 14, 1887, applies only to occasional payments of amounts deemed too insignificant to justify the Government in demanding written evidence of an agent's authority to receive and receipt for moneys, in accordance with the general rule. (3 *ibid.*, 378.)

Receipts for small amounts for occasional service paid to corporations, such as railroad, telegraph, turnpike, transfer, express, steamboat, hotel, newspaper, and ice companies, may be signed by the local agent in charge of the business of the company at the place where the service is rendered, or where it begins or terminates, and the certificate of the officer making payment that the person to whom payment was thus made was then the local agent of the company, in charge of its business at the place designated, will be sufficient evidence of the agent's authority to receive and receipt for the money paid. (*Ibid.*)

Under a resolution of the executive committee of the Western Union Telegraph Company, passed November 24, 1886, any person in charge of any office of said company is authorized to receive and receipt for payments to said company, and receipts by such persons for such payments are to be held as binding upon said company. (*Ibid.*, p. 379.)

All vouchers in support of payments of percentages retained under contracts must be accompanied, as contemplated by section 277 of the Revised Statutes, by satisfactory evidence, either primary or secondary, that the several amounts thereon paid

<sup>1</sup> The necessary expenses of all sales of public property, including the services of an auctioneer, are properly payable from the total receipts from such sale, unless provision is specifically made in appropriation acts to meet such expenses. (3 Dig. Compt. Dec., 323.)

All proceeds of sales of public property covered into the Treasury as miscellaneous receipts should be charged and credited on account of "proceeds of Government property," as contemplated by section 3618 of the Revised Statutes. (3 Dig. Compt. Dec., 323.)

Moneys received for stores, materials or supplies (except subsistence stores) sold to officers, enlisted men, or exploring or surveying expeditions authorized by law will be deposited to the credit of the Treasurer of the United States, and respectively revert to the appropriation out of which originally expended. Proceeds of sales of useless ordnance material are expended under conditions prescribed by law. Proceeds of sales of subsistence supplies are immediately available for the purchase of fresh supplies. (Par. 614, A. R., 1895.) Under section 3692 of the Revised Statutes all moneys received from the sale of materials, stores, or supplies to officers and soldiers of the Army can be applied to the liquidation of liabilities against the appropriation out of which they were originally expended, only during the fiscal year in which the sale was made. (3 Dig. Compt. Dec., 322.)

The proceeds of sales of all public property, the disposition of which is not provided for by the preceding paragraph, after the expenses of sale have been deducted, will be deposited to the credit of the Treasurer of the United States as "Miscellaneous receipts on account of proceeds of Government property," for which certificates of deposit will issue, showing the name, rank, regiment or corps of the depositor, the nature of the deposit, the kind of property, and the bureau to which it pertained. (Par. 615, A. R., 1895.)

The transfer of public property from one bureau or Department to another is not regarded as a sale. If money is received therefor, it may be used to replace such stores and will be reported accordingly. (Par. 616, *ibid.*)

*a* Every voucher signed on behalf of any person, firm, or corporation by an agent or attorney should bear the name of the proper firm, person, or corporation, followed by the name of the agent or attorney. (3 Dig. Compt. Dec., 379.)

not be withdrawn or applied, except in consequence of a subsequent appropriation made by law.<sup>1</sup>

492. So much of the appropriation for subsistence of the Army as may be necessary may be applied to the purchase of subsistence stores for sale to officers for the use of themselves and their families and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations, and the proceeds of all sales of subsistence-supplies shall hereafter be exempt from being covered into the Treasury and shall be immediately available for the purchase of fresh supplies. *Act of March 3, 1875 (18 Stat. L., 410).*

Appropriations for subsistence available for purchase of stores for sale to officers, etc.

Proceeds of sales available for similar purchases.

Ch. 130, Mar. 3, 1875, v. 18, p. 410.

493. From and after the passage of this act the Secretary of War be, and he is hereby, authorized and directed to be caused to be sold in such manner, and at such times and places, and in such quantities, as shall most conduce to the interest of the United States, all obsolete and unserviceable ammunition and leaden balls, and the surplus of pig lead in excess of two thousand tons now stored in the various arsenals of the United States, and to cause the

Sales of unserviceable ordnance. June 22, 1874, v. 18, p. 200.

have been retained, have since become payable, and have not previously been paid. (*Ibid.*)

Hereafter vouchers in support of partial payments, or vouchers on which the retention of percentages are noted, must be made in triplicate instead of duplicate. One of said vouchers is to be retained by the disbursing officer and the other two to be transmitted with his accounts to the accounting officers. The two vouchers so transmitted are to be examined and compared when the officer's accounts are adjusted and settled, one of them to be subsequently withdrawn by the Auditor and filed as a subvoucher with and in support of the voucher on which the final payment is made. (*Ibid.*)

It will be deemed a sufficient compliance with the requirement as to vouchers in support of partial payments, including those on which percentages are retained, if the vouchers intended to be withdrawn by the Third Auditor, after the necessary action of the accounting officers thereon and filed as subvouchers with the proper vouchers in support of final payments, be made without receipts and without copies of any subvouchers which may be filed with the original vouchers, but complete in all other respects and certified to by the proper officers. (*Ibid.*)

When a payment has been made to correct an error occurring in a previous voucher, the voucher on which the error was made, or other sufficient evidence of the error, should be transmitted with the accounts in which the disbursing officer claims credit (*Ibid.*, p. 380.)

Satisfactory evidence is required that commutation of sugar and coffee to enlisted men traveling under orders has been properly authorized before credit can be allowed a disbursing officer for a disbursement on that account. (*Ibid.*)

Vouchers on which percentages are retained, and which might otherwise be suspended under the decisions relating to such vouchers, may be passed to the credit of the disbursing officer or agent rendering them when the vouchers on which the retained percentages are paid are embraced in the same settlement with those on which the percentages are retained. (*Ibid.*)

Vouchers in support of the commutation of rations to soldiers on furlough should be accompanied by the original furlough, or a certificate that the fact of payment has been indorsed thereon, or other evidence sufficient to lessen the possibility of a double payment of the account. (*Ibid.*)

Vouchers in support of payments for telegrams on public business must be made in the name of the company rendering the telegraphic service and received by its proper officer or agent, as contemplated by paragraphs 726 and 727 of the Army Regulations of 1889. (See paragraphs 641-644, A. R., 1895.)

The certificates required to accompany vouchers in support of payments for purchases of supplies for the Army made by the Quartermaster's Department or by the Subsistence Department, whether given singly or in a consolidated form, should be written, stamped, or printed upon the voucher to which they pertain, and the papers furnishing any portion of the evidence required in such cases must be filed with the voucher to which they pertain, except when any such paper relates to two or more vouchers, in which case it should be filed with the first of said vouchers and reference thereto made on the others. (*Ibid.*)

<sup>1</sup> Under section 3618 of the Revised Statutes, paragraphs 491 ante and 592 post, all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, with certain specified exceptions, are to be deposited and covered into the Treasury as miscellaneous receipts, on account of "proceeds of Government property," and are not to be withdrawn or applied, except in consequence of a subsequent appropriation made by law. (3 Dig. Compt. Dec., 322.)



net proceeds of such sale, after paying all costs and expenses of breaking up and preparing said ammunition for sale, and all the necessary expenses of such sale, including the cost of transportation to the place of sale, to be covered into the Treasury of the United States with full accounts of said expenses. *Act of June 22, 1874 (18 Stat. L., 200).*

Sales of useless ordnance; proceeds available for purchases of new material.

Ch. 130, Mar. 3, 1875, v. 18, p. 388.

**494.** That the Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale, according to law, the net proceeds of which shall be turned into the Treasury; and an amount equal to the same is hereby appropriated, to be applied to the purposes of procuring a supply of material adapted in manufacture and calibre to the present wants of the service; but there shall be expended, under this provision, not more than seventy-five thousand dollars in one year; and in the case of sale of like materials in the War Department, the proceeds of which shall be turned into the Treasury, an amount equal to the net proceeds of such sale is hereby appropriated for the purpose of procuring a supply of material adapted in manufacture and calibre to the present wants of the war service; and there shall be expended in the War Department, under this provision, not more than seventy-five thousand dollars in any one year. *Act of March 3, 1875 (18 Stat. L., 388).*

#### ACCOUNTS.

Accounts.

July 17, 1862, c. 199, s. 1, v. 12, p. 593; Mar. 2, 1867, res. 48, v. 14, p. 571; July 15, 1870, c. 295, s. 15, v. 16, p. 334; Feb. 27, 1877, c. 69, v. 19, p. 249; July 31, 1894, v. 28, p. 206,

**495.** Every officer or agent of the United States who receives public money which he is not authorized to retain as salary, pay, or emolument, shall render his accounts monthly.<sup>1</sup> Such accounts, with the vouchers necessary to the correct and prompt settlement thereof, shall be sent by mail, or otherwise, to the Bureau to which they pertain, within ten days after the expiration of each successive month, and, after examination there, shall be passed to the proper accounting officer of the Treasury for settlement. Disbursing officers of the Navy shall, however, render their accounts and vouchers direct to the proper accounting officer of the Treasury. In case of the non-receipt at the Treasury or proper Bureau, of any accounts within a reasonable and proper time thereafter, the officer whose accounts are in default shall be required to furnish satisfactory evidence of having complied with the provisions of this section. Nothing herein contained shall, however, be

<sup>1</sup> The forms for the rendition of accounts are prescribed by the Comptroller of the Treasury. See, also, sec. 4 of the act of August 30, 1890, 26 Stat. L., 413, which required such accounts to be rendered quarterly.

construed to restrain the heads of any of the Departments from requiring such other returns or reports from the officer or agent, subject to the control of such heads of Departments, as the public interest may require. (*See sec. 5491 R. S., par. 502, post.*)

**496.** All officers, agents, or other persons receiving public moneys, shall render distinct accounts of the application thereof, according to the appropriation under which the same may have been advanced to them.

Distinct accounts required under separate heads of appropriation.  
Mar. 3, 1809, c. 28, s. 1, v. 2, p. 535.

## SUITS FOR RECOVERY OF MONEY.

Sec. 3623, R. S.

**497.** Whenever any person accountable for public money, neglects or refuses to pay into the Treasury the sum or balance reported to be due to the United States, upon the adjustment of his account, the Comptroller of the Treasury shall institute suit for the recovery of the same, adding to the sum stated to be due on such account, the commissions of the delinquent, which shall be forfeited in every instance where suit is commenced and judgment obtained thereon, and an interest of six per centum per annum, from the time of receiving the money until it shall be repaid into the Treasury.<sup>1</sup>

Suits to recover money.  
Mar. 3, 1797, c. 20, s. 1, v. 1, p. 512.

Sec. 3624, R. S.

## MISCELLANEOUS PROVISIONS.

**498.** Every officer charged with the payment of any of the appropriations made by any act of Congress, who pays to any clerk, or other employee of the United States, a sum less than that provided by law, and requires such employee to receipt or give a voucher for an amount greater than that actually paid to and received by him, is guilty of embezzlement, and shall be fined in double the amount so withheld from any employee of the Government, and shall be imprisoned at hard labor for the term of two years.

Penalty for receipting for larger sums than are paid.  
Mar. 3, 1853, c. 104, s. 4, v. 10, p. 239.

Sec. 5483, R. S.

**499.** Every disbursing officer of the United States who deposits any public money intrusted to him in any place or in any manner, except as authorized by law, or converts to his own use in any way whatever, or loans with or without interest, or for any purpose not prescribed by law withdraws from the Treasurer or any assistant treasurer, or any authorized depository, or for any purpose not prescribed by law transfers or applies any portion of the public money intrusted to him, is, in every such act, deemed guilty of an embezzlement of the money so deposited, converted, loaned, withdrawn, transferred, or applied; and shall be

Disbursing officer unlawfully depositing, converting, loaning, or transferring public money.  
June 14, 1866, c. 122, s. 2, v. 14, p. 64.

Sec. 5488, R. S.

<sup>1</sup>For other statutory provisions respecting the recovery of debts or balances due the United States, see the titles "The Comptroller of the Treasury" and "The Auditors of the Treasury" in the chapter entitled THE TREASURY DEPARTMENT, and the title "Distress Warrants" in the chapter entitled THE PUBLIC MONEY. See also *U. S. v. Gaussen*, 19 Wall., 198.

punished by imprisonment with hard labor for a term not less than one year nor more than ten years, or by a fine of not more than the amount embezzled or less than one thousand dollars, or by both such fine and imprisonment. (*See secs. 3620, 5497, R. S.*)

**500.** If the Treasurer of the United States, or any assistant treasurer, or any public depositary, fails safely to keep all moneys deposited by any disbursing officer or disbursing agent, as well as all moneys deposited by any receiver, collector, or other person having moneys of the United States, he shall be deemed guilty of embezzlement of the moneys not so safely kept, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled. (*See sec. 3639, R. S.*)

**501.** Every officer or other person charged by any act of Congress with the safe-keeping of the public moneys, who fails to safely keep the same, without loaning, using, converting to his own use, depositing in banks, or exchanging for other funds than as specially allowed by law, shall be guilty of embezzlement of the money so loaned, used, converted, deposited, or exchanged, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money so embezzled. (*See sec. 3639, R. S.*)

**502.** Every officer or agent of the United States who, having received public money which he is not authorized to retain as salary, pay, or emolument, fails to render his accounts for the same as provided by law, shall be deemed guilty of embezzlement, and shall be fined in a sum equal to the amount of the money embezzled, and shall be imprisoned not less than six months or more than ten years. (*See secs. 3622, 3633, R. S.*)

**503.** Every person who, having moneys of the United States in his hands or possession, fails to make deposit of the same with the Treasurer, or some assistant treasurer, or some public depositary of the United States, when required so to do by the Secretary of the Treasury, or the head of any other proper Department, or by the accounting officers of the Treasury, shall be deemed guilty of embezzlement thereof, and shall be imprisoned not less than six months nor more than ten years, and fined in a sum equal to the amount of money embezzled.

**504.** The provisions of the five preceding sections shall be construed to apply to all persons charged with the safe-keeping, transfer, or disbursement of the public money, whether such persons be indicted as receivers or depositaries of the same (*See secs. 3615-3652, R. S.*)

505. Upon the trial of any indictment against any person for embezzling public money under the provisions of the six preceding sections, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury, as required in civil cases, under the provisions for the settlement of accounts between the United States and receivers of public money.<sup>1</sup> (*See secs. 3625, 3633, R. S.*)

Record evidence of embezzlement.  
Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63.  
Sec. 5494, R. S.

506. The refusal of any person, whether in or out of office, charged with the safe-keeping, transfer, or disbursement of the public money, to pay any draft, order, or warrant drawn upon him by the proper accounting officer of the Treasury, for any public money in his hands belonging to the United States, no matter in what capacity the same may have been received, or may be held, or to transfer or disburse any such money promptly, upon the legal requirement of any authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima-facie evidence of such embezzlement. (*See sec. 3644, R. S.*)

Refusal to pay draft prima facie evidence of embezzlement.  
*Ibid.*  
Sec. 5495, R. S.

507. If any officer charged with the disbursement of the public moneys, accepts, receives, or transmits to the Treasury Department to be allowed in his favor, any receipt or voucher from a creditor of the United States, without having paid to such creditor in such funds as the officer received for disbursement, or in such funds as he may be authorized to take in exchange, the full amount specified in such receipt or voucher, every such act is an act of conversion, by such officer, to his own use, of the amount specified in such receipt or voucher. (*See sec. 3652, R. S.*)

Evidence of conversion.  
*Ibid.*  
Sec. 5496, R. S.

508. Every banker, broker, or other person not an authorized depository of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States, or who uses, transfers, converts, appropriates, or applies any portion of the public money for any purpose not prescribed by law, and every president, cashier, teller, director, or other officer of any bank or banking association, who violates any of the provisions of this section, is guilty of an act of embezzlement of the public money so deposited, loaned, transferred, used, converted, appropriated, or applied, and shall be punished as prescribed in section fifty-four hundred and eighty-eight. (*See secs. 3639, 3651, R. S.*)

Unlawfully receiving money by bankers, etc., to be embezzlement.  
June 14, 1866, c. 122, s. 3, v. 14, p. 65.  
Sec. 5497, R. S.

<sup>1</sup> See U. S. v Gaussen, 19 Wall., 198.

Officers, etc.,  
interested in  
claims.

Feb. 26, 1853, c.  
81, s. 2, v. 10, p.  
170.

Sec. 5498, R. S.

**509.** Every officer of the United States, or person holding any place of trust or profit, or discharging any official function under, or in connection with, any Executive Department of the Government of the United States, or under the Senate or House of Representatives of the United States, who acts as an agent or attorney for prosecuting any claim against the United States, or in any manner, or by any means, otherwise than in discharge of his proper official duties, aids or assists in the prosecution or support of any such claim, or receives any gratuity, or any share of or interest in any claim from any claimant against the United States, with intent to aid or assist, or in consideration of having aided or assisted, in the prosecution of such claim, shall pay a fine of not more than five thousand dollars, or suffer imprisonment not more than one year, or both.<sup>1</sup>

United States  
officer accepting  
bribe, etc.

*Ibid.*

July 13, 1866, c.

184, s. 62, v. 14, p.

168; Mar. 3, 1863,

c. 76, s. 6, v. 12, p.

740; July 18, 1866,

c. 201, s. 35, v. 14,

p. 186.

Sec. 5501, R. S.

**510.** Every officer of the United States, and every person acting for or on behalf of the United States, in any official capacity under or by virtue of the authority of any department or office of the Government thereof; and every officer or person acting for or on behalf of either House of Congress, or of any committee of either House, or of both Houses thereof, who asks, accepts, or receives any money, or any contract, promise, undertaking, obligation, gratuity, or security for the payment of money, or for the delivery or conveyance of anything of value, with intent to have his decision or action on any question, matter, cause, or proceeding which may, at any time, be pending, or which may be by law brought before him in his official capacity, or in his place of trust or profit, influenced thereby, shall be punished as prescribed in the preceding section. (*See sec. 5451, R. S.*)

Forfeiture of  
office.

Feb. 26, 1853, c.

81, s. 6, v. 10, p.

171.

Sec. 5502, R. S.

**511.** Every member, officer, or person, convicted under the provisions of the two preceding sections, who holds any place of profit or trust, shall forfeit his office or place; and shall thereafter be forever disqualified from holding any office of honor, trust, or profit under the United States.<sup>1</sup>

Officer con-  
tracting beyond  
specific appro-  
priation.

July 25, 1868, c.

233, s. 3, v. 15, p.

177.

Sec. 5503, R. S.

**512.** Every officer of the Government who knowingly contracts for the erection, repair, or furnishing of any public building, or for any public improvement, to pay a larger amount than the specific sum appropriated for such purpose, shall be punished by imprisonment not less than six months nor more than two years, and shall pay a fine of two thousand dollars. (*See sec. 3733, R. S.*)

<sup>1</sup> Section 5500, above referred to, but here omitted, relates to the offense of bribery when committed by a judge of a court of the United States.

## COUNTERFEIT MONEY.

513. That all United States officers charged with the receipt or disbursement of public moneys, and all officers of national banks, shall stamp or write in plain letters the word "counterfeit," "altered" or "worthless," upon all fraudulent notes issued in the form of, and intended to circulate as money, which shall be presented at their places of business; and if such officers shall wrongfully stamp any genuine note of the United States, or of the national banks, they shall, upon presentation, redeem such notes at the face-value thereof. *Sec. 5, act of June 30, 1876 (19 Stat. L., 64).*

Fraudulent notes to be stamped as "counterfeit." Sec. 5, June 30, 1876, v. 19, p. 64.

## LOST CHECKS—DUPLICATE CHECKS.—BONDS.

Par.	Par.
514. Check lost, stolen, or destroyed may be duplicated, but not for sum exceeding \$2,500.	515. Examination and renewal of bonds.

514. Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of twenty-five hundred dollars. *Act of February 16, 1895 (23 Stat. L., 306).*

Check lost, stolen, or destroyed may be duplicated, but not for sum exceeding \$2,500. Feb. 16, 1885, v. 23, p. 306. Sec. 3646, R. S.

In case the disbursing officer or agent by whom such lost, destroyed, or stolen original check was issued is dead, or no longer in the service of the United States, it shall be the duty of the proper accounting officer, under such regulations as the Secretary of the Treasury shall pre-

Duplicate check when issuing officer is dead. Feb. 7, 1872, c. 12, s. 2, v. 17, p. 29. Sec. 3647, R. S.

<sup>1</sup>The following paragraph of the Army Regulations of 1895 prescribes a method of procedure in the case of a check which has been lost or destroyed:

"When an original check of a disbursing officer, not exceeding \$2,500 in amount, has been lost or destroyed, a duplicate check may be issued by him, after six months and within three years of the date of the original, upon the owner filing with him the notice and proof of loss and the indemnity bond required by sections 3646 and 3647, Revised Statutes, and act of February 16, 1885. In case the disbursing officer who issued the original check is no longer in the service, the notice and proof of loss, and the indemnity bond will be sent to the Secretary of the Treasury prior to the issue of a duplicate check. The proper accounting officer of the Treasury will state an account in favor of the owner of said check and charge the amount thereof to the account of such officer. Instructions for the execution and use of the affidavit and bond, and the issue of the duplicate check, accompany the blank form furnished by the Treasury Department." (*Par. 599, A. R., 1890.*)

scribe, to state an account in favor of the owner of such original check for the amount thereof, and to charge such amount to the account of such officer or agent.<sup>1</sup>

#### EXAMINATION AND RENEWAL OF BONDS.

Examination  
and renewal of  
bonds.  
Sec. 5, Mar. 2,  
1895, v. 28, p. 807.

515. Hereafter every officer required by law to take and approve official bonds shall cause the same to be examined at least once every two years for the purpose of ascertaining the sufficiency of the sureties thereon; and every officer having power to fix the amount of an official bond shall examine it to ascertain the sufficiency of the amount thereof and approve or fix said amount at least once in two years and as much oftener as he may deem it necessary.

Hereafter every officer whose duty it is to take and approve official bonds shall cause all such bonds to be renewed every four years after their dates, but he may require such bonds to be renewed or strengthened oftener if he deem such action necessary. In the discretion of such officer the requirement of a new bond may be waived for the period of service of a bonded officer after the expiration of a four-year term of service pending the appointment and qualification of his successor: *Provided*, That the nonperformance of any requirement of this section on the part of any official of the Government shall not be held to affect in any respect the liability of principal or sureties on any bond made or to be made to the United States: *Provided further*, That the liability of the principal and sureties on all official bonds shall continue and cover the period of service ensuing until the appointment and qualification of the successor of the principal: *And provided further*, That nothing in this section shall be construed to repeal or modify section thirty-eight hundred and thirty-six of the Revised Statutes of the United States. *Sec. 5, act of March 2, 1895 (28 Stat. L., 807).*

<sup>1</sup> For provisions of law respecting outstanding checks and accounts of disbursing officers which have remained unchanged for three years see paragraphs 219, 220, and 221, *ante*.

## CHAPTER XIV.

### THE ADJUTANT-GENERAL'S DEPARTMENT.

Par.	Par.
516. The Adjutant-General's Department; composition.	518. To act as assistant inspectors-general.
517. Vacancies to be filled from the line.	519. Monthly returns.

516. That the Adjutant-General's Department of the Army shall consist of one Adjutant-General, with the rank, pay, and emoluments of brigadier-general; four assistant adjutants-general, with the rank, pay, and emoluments of colonel; six assistant adjutants-general, with the rank, pay, and emoluments of lieutenant-colonel; and four assistant adjutants-general, with the rank, pay, and emoluments of major: *Provided*, That the vacancies in the grade of colonel and lieutenant-colonel created by this act shall be filled by the promotion by seniority of the officers now in the Adjutant General's Department.<sup>1</sup> *Acts of February 28, 1887 (24 Stat. L., 424), and August 6, 1894 (28 Stat. L., 234).*

The Adjutant-General's Department; composition. Feb. 28, 1887, v. 24, p. 434; Aug. 6, 1894, v. 28, p. 234. Sec. 1128, R. S.

<sup>1</sup> The organization of this Department as fixed in section 1128, Revised Statutes, has been modified by the acts of February 28, 1887 (24 Stat. L., 434), and August 6, 1894 (28 Stat. L., 234). The last-named statute contains the provision "that there shall be no appointment of assistant adjutant-general with the rank of major until the number of such officers in that grade shall be reduced below four and thereafter the number of such officers in that grade shall be fixed at four." For general provisions respecting appointments and promotions in this Department, see the chapter entitled THE STAFF DEPARTMENTS.

The Adjutant-General's Department is the bureau of orders and records of the Army. Orders and instructions emanating from the War Department or Army Headquarters and all general regulations are communicated to troops and individuals in the military service through the Adjutant-General. His office is the repository for the records of the War Department which relate to the personnel of the permanent military establishment and militia in the service of the United States, to the military history of every commissioned officer and soldier thereof, and to the movements and operation of troops.

The records of all appointments, promotions, resignations, deaths, and other casualties in the Army, the preparation and distribution of commissions, and the compilation and issue of the Army Register and of information concerning examinations for appointment and promotion pertain to the Adjutant-General's Office.

The Adjutant-General is charged, under the direction of the Secretary of War, with the management of the recruiting service, the collection and classification of military information in regard to our own and foreign countries, the preparation of instructions to officers detailed to visit encampments of militia, and the digesting, arranging, and preserving of their reports; also the preparation of the annual returns of the militia required by law to be submitted to Congress. Requests for military information which require action on the part of any military attaché of the United States will be made to the Adjutant-General of the Army. (Par. 748, A. R., 1895.)

In the Adjutant-General's Office the names of all enlisted soldiers are enrolled, enlistments and descriptive lists filed, deaths, discharges, desertions, etc., recorded, the general returns of the Army consolidated, returns of regiments and posts and all muster rolls, and the inventories of effects of deceased officers and soldiers preserved. (Par. 749, *ibid.*) For other duties pertaining to this Department, see paragraphs 750-788 and 804-806, A. R. of 1895.



Vacancies filled from the line.

July 17, 1862, c. 200, s. 22, v. 12, p. 597; Mar. 3, 1869, c. 124, s. 6, v. 15, p. 318; Apr. 10, 1869,

**517.** All vacancies in the grade of major, in the Adjutant-General's Department, shall, when filled, be filled by selections from the next lowest grade in the line of the Army.

res. 11, v. 16, p. 53; Aug. 6, 1894, v. 28, p. 234. Sec. 1129, R. S.

To act as assistant inspectors-general.

July 5, 1838, c. 162, s. 7, v. 5, p. 257; June 18, 1846, c. 29, s. 6, v. 9, p. 18; Mar. 3, 1847, c. 61, s. 2, v. 9, p. 184; July 19, 1848, c. 104, s. 3, v. 9, p. 247; Mar. 2, 1849, c. 83, s. 4, v. 9, p. 351. Sec. 1130, R. S.

**518.** Assistant adjutants-general shall, in addition to their own duties, perform those of assistant inspectors-general, when the convenience of the service requires them to do so.

#### RETURNS OF TROOPS.

Monthly returns.  
7 Art. War.

**519.** Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.<sup>1</sup> *Seventh article of war.*

<sup>1</sup> Commanders of departments, corps, and posts will make to the Adjutant-General's Office, in Washington, monthly returns of their respective commands on forms furnished by the Adjutant-General of the Army, and in accordance with the directions printed thereon. In like manner company commanders will make monthly returns of their companies to regimental headquarters. (Par. 789, A. R., 1895.)

For instructions relating to the preparation of monthly returns see paragraphs 789-798, Army Regulations, 1895.

## CHAPTER XV.

### THE INSPECTOR-GENERAL'S DEPARTMENT.

Par.	Par.
520. The Inspector-General's Department; composition.	524. Inspection of volunteer soldiers' homes.
521. Expert accountant.	525. Annual inspection of military prison.
522. Inspections of public works and disbursements.	526. Inspectors-general to designate articles for sale, etc.
523. Limitation on mileage.	

520. That the Inspector-General's Department of the Army shall hereafter consist of one Inspector-General, with the rank, pay, and emoluments of brigadier-general; two inspectors-general, with the rank, pay, and emoluments of colonel; two inspectors-general, with the rank, pay, and emoluments of lieutenant-colonel; and two inspectors-general, with the rank, pay, and emoluments of major: *Provided*, That the offices restored to the Inspector-General's Department, or added thereto, by this act, shall be filled by promotion of the officers now in that department; and that thereafter appointments to fill vacancies<sup>1</sup> in the In-

Inspector-General's Department.

Feb. 5, 1885, v. 23, p. 297.

Sec. 1131, R. S.

<sup>1</sup>The rank of brigadier-general was conferred upon the senior Inspector-General by the act of December 12, 1878 (20 Stat. L., 257). Vacancies in this department are filled by selection from the next lowest grade in the line of the Army. The organization prescribed for this department in section 1131, Revised Statutes, as modified by the act of June 23, 1874 (18 Stat. L., 244), was replaced by the act of February 5, 1885, above cited. Act of August 6, 1894 (28 Stat. L., 234). The act of June 23, 1874 (18 Stat. L., 244), contained a provision authorizing the Secretary of War to "detail officers of the line, not to exceed four, to act as assistant inspectors-general: *Provided*, That officers of the line detailed as acting inspectors-general shall have all the allowances of cavalry officers of their respective grades."

For general provisions respecting appointments and promotions in this department see the chapter entitled THE STAFF DEPARTMENTS.

The duties of inspectors-general are defined in the following paragraphs of the Army Regulations of 1895:

Officers of the Inspector-General's Department will inspect once in each year all military commands, garrisoned posts, and camps, and once in two years such ungarrisoned posts and national cemeteries as can be visited without departing materially from the routes of other prescribed inspections. (Par. 867, A. R., 1895.)

Inspections of the Military Academy will be made only under specific instructions given in each case by the Secretary of War, and inspections of the service schools, in so far as they are distinct from posts, under similar instructions given by the Secretary of War or the Commanding General of the Army. (Par. 869, *ibid.*)

The military department of civil institutions of learning at which officers of the Army are detailed will be inspected annually, near the close of the college year, under specific instructions. The inspecting officer, upon his arrival at the institution, will apply to the president or the administrative officer thereof for such aid or facilities as he may require. His report will be sent to the Inspector-General of the Army, then to the Adjutant-General of the Army for note and return, and a copy furnished the president of the institution by the War Department. (Par. 870, *ibid.*)

The sphere of inquiry of the Inspector-General's Department includes every branch of military affairs except when specially limited in these regulations or in orders. Inspectors-general and acting inspectors-general will exercise a comprehensive and general observation within their respective districts over all that pertains to the efficiency of the Army, the condition and state of supplies of all kinds, of arms and equipments, of the expenditure of public property and moneys, and the condition of accounts of all disbursing officers of every branch of the service; of

spector-General's Department, and promotions therein, shall be made in conformity with sections eleven hundred and twenty-nine, eleven hundred and ninety-three, and twelve hundred and four of the Revised Statutes of the United States, and in the same manner as in the other staff departments of the Army. And all laws or parts of laws conflicting with this act are hereby repealed. *Act of February 5, 1885 (23 Stat. L., 297).*

Expert accountant.  
Feb. 24, 1891, v.  
26, p. 773.

521. For pay of one expert accountant for the Inspector-General's Department, to be appointed in case of vacancy, by the Secretary of War, two thousand five hundred dollars.<sup>1</sup> *Act of February 24, 1891 (26 Stat. L., 773).*

Inspections of public works and disbursements.  
Apr. 20, 1874, v.  
18, p. 33.

522. That it shall be the duty of the Secretary of War to cause frequent inquiries to be made as to the necessity, economy, and propriety of all disbursements made by disbursing officers of the Army, and as to their strict conformity to the law appropriating the money; also to ascertain whether the disbursing officers of the Army comply with the law in keeping their accounts and making their deposits; such inquiries to be made by officers of the Inspection Department of the Army, or others detailed for that purpose: *Provided*, That no officer so detailed shall be in any way connected with the department or corps making the disbursement. That the reports of such inspections shall be made out and forwarded to Congress with the annual report of the Secretary of War.<sup>2</sup> *Secs 1 and 2, act of April 20, 1874 (18 Stat. L., 33).*

Reports of inspections.

the conduct, discipline, and efficiency of officers and troops, and report with strict impartiality in regard to all irregularities that may be discovered. From time to time they will make such suggestions as may appear to them practicable for the cure of any defect that may come under their observation. (Par. 857, *ibid.*)

Inspectors-general and acting inspectors-general are under the orders of the Secretary of War and the Commanding General of the Army only, and all orders not confidential will be issued from the Adjutant-General's Office and transmitted to them through the Inspector-General of the Army. They will make the general inspections within the limits of their respective districts, and will each be allowed the necessary clerks and one messenger, who will be assigned by the Secretary of War. (Par. 858, *ibid.*)

See also paragraphs 859-866, 872-875, and 878-889, A. R., 1895.

<sup>1</sup> For statutory provisions respecting the mileage of this officer see the act of February 27, 1893 (27 Stat. L., 430). Par. 634, *post*.

## 2 INSPECTIONS OF PUBLIC WORKS AND DISBURSEMENTS.

The inspection contemplated in this provision is that required by the act of April 20, 1874 (18 Stat. L., 33). See also Chapter XLI, entitled THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

All depots, armories, arsenals, and public works of every kind under charge of officers of the Army, except works of engineering conducted under the direction of the Secretary of War and supervision of the Chief of Engineers, will be inspected annually by officers of the Inspector-General's Department. These inspections will include military and business administration and methods, but will not extend to the scientific or technical character of work, for which the officer in charge is responsible, through the head of his department, to the Secretary of War. (Par. 868, A. R., 1895.)

Inspectors general and acting inspectors-general will inquire as to the necessity, economy, and propriety of all disbursements, their strict conformity to the law appropriating the money, and whether the disbursing officers comply with the law in keeping their accounts and making their deposits. A statement of receipts and expenditures and of the distribution of funds, with a list of outstanding checks, on forms furnished by the Inspector-General of the Army, will be submitted by the disbursing officer to the inspector, who should immediately transmit the list of outstanding checks to the several depositories. Upon return from a depository, balances

**523.** Hereafter no portion of the appropriation for mileage to officers traveling on duty without troops shall be expended for inspections or investigations, except such as are especially ordered by the Secretary of War, or such as are made by Army and department commanders in visiting their commands, and those made by Inspector-General's Department in pursuance of law, Army regulations, or orders issued by the Secretary of War or the Commanding General of the Army; and all orders involving the payment of mileage shall state the special duty enjoined. *Act of August 6, 1894 (28 Stat. L., 237).*

Limitation on mileage.  
Aug. 6, 1894, v. 28, p. 237.

**524.** The Secretary of War shall hereafter exercise the same supervision over all receipts and disbursements on account of the volunteer soldiers' homes as he is required by law to apply to the accounts of disbursing officers of the Army.<sup>1</sup> *Act of March 3, 1893 (27 Stat. L., 653).*

Inspection of volunteer soldiers' homes.  
Mar. 3, 1893, v. 27, p. 653.

**525.** One of the inspectors-general of the Army shall, at least once each year, visit the prison for the purpose of examining into the books and all the affairs thereof, and ascertaining whether the laws, rules, and regulations relating thereto are complied with, the officers are competent and faithful, and the convicts properly governed and employed, and at the same time treated with humanity and kindness. And it shall be the duty of the inspector, at once, to make full report thereof to the Secretary of War.

Annual inspection of military prison.  
Jan. 19, 1891, v. 26, p. 722.  
Sec. 1348, R. S.

**526.** The officers of the Subsistence Department shall procure, and keep for sale to officers and enlisted men at cost prices, for cash or on credit, such articles as may, from time to time, be designated by the inspectors-general of the Army. An account of all sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General. *See sections 1299 and 1300, Rev. Stat. (paragraphs 659 and 660, post).*

Inspectors-general to designate articles for sale, etc.  
Sec. 25, July 28, 1866, v. 14, p. 336.  
Sec. 1144, R. S.

will be verified and noted on the inspection report, which will then be forwarded to the Inspector-General. The list of outstanding checks will be retained by the inspector, and a copy, with indorsements thereon, sent to the Inspector-General. (Par. 876, *ibid.*)

When an officer ceases to act as a disbursing officer, he will submit to the officer to whom the inspection of his accounts has been assigned a statement of his money accounts from date of last inspection to and including the closing of his accounts, with a list of outstanding checks. If an inspection be impracticable, the statement will be forwarded to the Inspector-General of the Army. (Par. 877, *ibid.*)

The inspection of disbursements and money accounts of disbursing officers required by act of April 20, 1874, will be made by officers of the Inspector-General's Department or others detailed for that purpose, and, as far as practicable, at irregular intervals; but no officer so detailed shall be in any way connected with the corps or staff department making the disbursement. The frequency of these inspections will be regulated by the Secretary of War. (Par. 871, *ibid.*)

<sup>1</sup>Section 2 of the act of March 3, 1883 (22 Stat. L., 564), requires the Inspector-General, in person, to make an annual inspection of the Home. (See par. 1719, *post*.)

## CHAPTER XVI.

### THE JUDGE-ADVOCATE-GENERAL'S DEPARTMENT.

Par.	Par.
527. The Judge-Advocate-General's Department; composition.	531. Judge-advocates of departments and of courts-martial may administer oaths for certain purposes.
528. Promotions; how made.	
529. Duties of the Judge-Advocate-General.	532. Disposition of proceedings of certain minor courts-martial.
530. Duties of judge-advocates.	

The Judge-Advocate-General's Department; composition.  
July 5, 1884, v. 23, p. 113.

527. That the Bureau of Military Justice<sup>1</sup> and the corps of judge-advocates of the Army be, and the same are hereby, consolidated under the title of Judge-Advocate-General's Department; and shall consist of one Judge-Advocate-General with the rank, pay, and allowances of a brigadier-general; one assistant judge-advocate-general, with the rank, pay, and allowances of a colonel; three deputy judge-advocate-generals, with the rank, pay, and allowances of lieutenant-colonels; and three judge-advocates, with the rank, pay, and allowances of majors; the colonel and lieutenant-colonels to be selected by seniority from the present corps of judge-advocates. And the Secretary of War is hereby authorized to detail such number of officers of the line as he may deem necessary to serve as acting judge-advocates of military departments, who shall have while on such duty the rank, pay, and allowances of captains of cavalry. *Act of July 5, 1884 (23 Stat. L., 113).*

Promotions how made.  
Sec. 2, *ibid.*

528. Promotions in the Judge-Advocate-General's Department, as provided in the first section of this act, shall be by seniority up to and including the rank of colonel.<sup>2</sup> *Sec. 2, ibid.*

Duties of the Judge-Advocate-General.  
Sec. 1199, R. S.

529. The Judge-Advocate-General shall receive, revise and cause to be recorded the proceedings of all courts-martial, courts of inquiry, and military commissions, and

<sup>1</sup> Sections 1198 and 1200 of the Revised Statutes and section 2 of the act of June 23, 1874 (18 Stat. L., 244), were replaced by the act of July 5, 1884 (23 Stat. L., 117), which merged the Bureau of Military Justice and the corps of judge-advocates in the Judge-Advocate-General's Department, created by that statute.

<sup>2</sup> Section 3 of this act contains the provision that nothing herein shall be construed to interfere with the rank or position of any officer now holding a commission in either the Bureau of Military Justice or corps of judge-advocates.

perform such other duties as have been performed heretofore by the Judge-Advocate-General of the Army.<sup>1</sup>

530. Judge-advocates shall perform their duties under the direction of the Judge-Advocate-General.

531. That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of military justice, and for other purposes of military administration.

*Sec. 4, act of July 27, 1892 (27 Stat. L., 278.)*

532. That hereafter the records of regimental, garrison, and field officers [and] courts-martial shall after having been acted upon, be retained and filed in the Judge-Advocate's office at the Headquarters of the Department Commander, in whose department the courts were held, for two years, at the end of which time they may be destroyed.

*Act of March 3, 1877 (19 Stat. L., 310).*

<sup>1</sup>The work done in his office and for which this officer is responsible consists mainly of the following particulars: Reviewing and making reports upon the proceedings of trials by court-martial of officers, enlisted men, and cadets, and the proceedings of courts of inquiry; making reports upon applications for pardon or mitigation of sentence; preparing and revising charges and specifications prior to trial, and instructing judge-advocates in regard to the conduct of prosecutions; drafting of contracts, bonds, etc.; as also for execution by the Secretary of War of deeds, leases, licenses (see License), grants of rights of way, approvals of location of rights of way, approvals of plans of bridges and other structures, notices to alter bridges as obstructions to navigation, etc.; framing of bills, forms of procedure, etc.; preparing of opinions upon questions relating to the appointment, promotion, rank, pay, allowances, etc., of officers, enlisted men, etc., and to their amenability to military jurisdiction and discipline; upon the civil rights, liabilities, and relations of military persons and the exercise of the civil jurisdiction over them; upon the employment of the Army in execution of the laws; upon the discharge of minors, deserters, etc., on habeas corpus; upon the administration of military commands, the care and government of military reservations, and the extent of the United States and State jurisdictions over such reservations or other lands of the United States; upon the proper construction of appropriation acts and other statutes; upon the interpretation and effect of public contracts between the United States and individuals or corporations; upon the validity and disposition of the varied claims against the United States presented to the War Department; upon the execution of public works under appropriations by Congress; upon obstructions to navigation as caused by bridges, dams, locks, piers, harbor lines, etc.; upon the riparian rights of the United States and of States and individuals on navigable waters, etc.; and the furnishing to other Departments of the Government of statements and information apposite to claims therein pending, and to individuals of copies of the records of their trials under the one hundred and fourteenth article of war. The matter of the submitting to the Judge-Advocate-General of applications for opinions is regulated by paragraph 852, Army Regulations.

The Judge-Advocate-General's Department is the Bureau of Military Justice. The Judge-Advocate-General is the custodian of the records of all general courts-martial, courts of inquiry, and military commissions, and of all papers relating to the title of lands under the control of the War Department, except the Washington Aqueduct and the public buildings and grounds in the District of Columbia. The officers of this department render opinions upon legal questions when called upon by proper authority. (Par. 890, A. R., 1895.)

The original proceedings of all general courts-martial, courts of inquiry, and military commissions, with the decisions and orders of the reviewing authorities made thereon, and the proceedings of all general courts-martial, courts of inquiry, and military commissions which require the confirmation of the President, but which have not been appointed by him, will be forwarded direct to the Judge-Advocate-General. One copy of the order promulgating the action of the court and a copy of every subsequent order affecting the case will be forwarded to the Judge-Advocate-General, with the record of each case. When more than one case is embraced in a single order, a sufficient number of copies will be forwarded to enable one to be filed with each record. The proceedings of all courts and military commissions appointed by the President will be sent direct to the Secretary of War. (Par. 892, A. R., 1895.)

Applications of officers, enlisted men, and military prisoners for copies of proceedings of general courts-martial, to be furnished them under the one hundred and fourteenth article of war, will, when received by post or other commanders, be forwarded direct to the Judge-Advocate-General. (Par. 894, A. R., 1895.)

Communications relating to proceedings of military courts on file in the Judge-Advocate-General's Department will be addressed and forwarded direct by department commanders to the Judge-Advocate-General. In routine matters the Judge-Advocate-General and judge-advocates may correspond with each other direct. (Par. 895, A. R., 1895.)

The reports which the Judge-Advocate-General may render upon cases received by him, and which require the action of the President, will be addressed to the Secretary of War and will be forwarded, through the Commanding General of the Army, for such remarks and recommendations as he may see fit to make. (Par. 896, A. R., 1895.)

Duties of judge-advocates.  
Sec. 1201, R. S.

Judge-advocates of departments and of courts-martial may administer oaths for certain purposes.

Sec. 4, July 27, 1892, v. 27, p. 278.

Disposition of proceedings of certain minor courts martial.

Mar. 3, 1877, v. 19, p. 310.

## CHAPTER XVII.

### THE QUARTERMASTER'S DEPARTMENT.

Par.		Par.	
533.	The Quartermaster's Department; composition.	553.	Number of civilian employees limited.
534.	Military storekeepers.	554.	Salaries of civilian employees.
535.	Duties.	555.	Extra duty; rates of pay.
536.	Kind and amount of supplies to be prescribed by Secretary of War.	556.	Details to be in writing.
537.	Subsistence duty of assistant quartermasters.	557.	Details in the field; how made.
538.	Post quartermaster sergeants.	558.	Rates of extra-duty pay
539.	Procurement of supplies.	559.	Allowance of fuel and forage.
540.	Purchases; how made; emergency purchases.	560.	No discrimination in issues of forage to officers serving east of Mississippi River.
541.	Expenses of bakeries, post schools, messes, etc.	561.	Purchases of clothing.
542.	Post gardens and exchanges.	562.	Uniform to be prescribed by President.
543.	Printing.	563.	Clothing allowances.
544.	Transportation of troops.	564.	Clothing balances; how payable.
545.	Transportation in kind to officers.	565.	Gratuitous issues.
546.	Limit to number of pack animals; transportation of stores by contract.	566.	Selling or spoiling clothing etc.; penalty.
547.	Means of transportation to be procured by contract.	567.	Altering clothing.
548.	Cavalry and artillery horses to be procured by contract; inspection.	568.	Limit of cost.
549.	Limit as to number of horses for mounted service.	569.	Permanent barracks.
550.	Supplies to naval and marine detachments.	570.	Limit on expenditures.
551.	Property for Government surveys, National Museum, etc., to be transported.	571.	Quarters in kind to be furnished to officers.
552.	Payments to land-grant railroads.	572.	Officers temporarily absent in the field not to lose right to quarters.
		573.	Returns of clothing and equipment.
		574.	Uniforms and equipments not to be sold, bartered, exchanged, loaned, etc.

The Quartermaster's Department; composition.

Mar. 3, 1875, v. 18, p. 339.

Sec. 1132, R. S. assistant quartermaster's-general, with the rank, pay and

emoluments of colonels of cavalry; eight deputy-quartermasters-general, with the rank, pay and emoluments of lieutenant-colonels of cavalry; fourteen quartermasters, with the rank, pay and emoluments of majors of cavalry; and thirty assistant quartermasters, with the rank, pay and emoluments of captains of cavalry.<sup>1</sup> *Sec. 1, act of March 3, 1875 (18 Stat. L., 339).*

**534.** That no more appointments shall be made in the grade of military storekeepers in the Quartermaster's Department, and this grade shall cease to exist as soon as the same becomes vacant by death, resignation, or otherwise of the present incumbents.<sup>2</sup> *Sec. 2, act of March 3, 1875 (18 Stat. L., 339).*

**535.** It shall be the duty of the officers of the Quartermaster's Department, under the direction of the Secretary of War, to purchase and distribute to the Army all military stores and supplies, requisite for its use, which other corps are not directed by law to provide; to furnish means of transportation for the Army, its military stores and supplies, and to provide for and pay all incidental expenses of the military service which other corps are not directed to provide for and pay.

**536.** The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster Departments of the Army, and the duties and powers thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations be intrusted with the same; and shall fix and make reasonable allowances for the store rent and storage necessary for the safe-keeping of all military stores and supplies.

<sup>1</sup>The Quartermaster-General is appointed by selection from the officers of the Department. For general provisions respecting promotions and appointments in this Department and for provision as to the performance of the duties of the office during the absence of the Quartermaster-General see the chapter entitled THE STAFF DEPARTMENTS. Vacancies in the lowest grade in this Department are filled by selection from the next lower grade in the line of the Army. This clause operates to repeal the requirements of section 1132, Revised Statutes, that all appointments in the Quartermaster's Department shall be made from the Army, and a similar provision of the act of March 3, 1883 (22 Stat. L., 457), authorizing the appointment of officers from civil life. (Act of August 6, 1894, 28 Stat. L., 234.)

<sup>2</sup>The acts of June 23, 1874, March 3, 1875, and June 26, 1876, reorganizing the staff corps, provide "that no officer now in service shall be reduced in rank or mustered out by reason of any provisions of law therein made reducing the number of officers in any department or corps of the Army." There are now in service, in excess of the number allowed by these acts, three ordnance storekeepers, two majors, and one captain, in the Ordnance Department. This grade, having become vacant, has ceased to exist as a grade of rank in the Quartermaster's Department.

Military storekeepers.  
Mar. 3, 1875, v. 18, p. 339.

Duties.  
Mar. 28, 1812, c. 46, ss. 3, 5, v. 2, pp. 606, 697; Aug. 23, 1842, c. 186, s. 3, v. 5, p. 513; May 18, 1826, c. 74, s. 1, v. 4, p. 173.  
Sec. 1133, R. S.

Kind and amount of supplies to be prescribed by Secretary of War.  
Mar. 3, 1813, c. 48, s. 5, v. 2, p. 817.  
Sec. 219, R. S.



Subsistence  
duty of assistant  
quartermasters.  
Sec. 1134, R. S.

**537.** Assistant quartermasters shall do duty as assistant commissaries of subsistence when so ordered by the Secretary of War.

#### POST QUARTERMASTER SERGEANTS.

Post quarter-  
master ser-  
geants.  
July 5, 1884, v.  
23, p. 109.

**538.** That the Secretary of War is authorized to appoint, on the recommendation of the Quartermaster-General, as many post quartermaster sergeants, not to exceed eighty, as he may deem necessary for the interests of the service, said sergeants to be selected by examination from the most competent enlisted men of the Army who have served at least four years, and whose character and education shall fit them to take charge of public property and to act as clerks and assistants to post and other quartermasters. Said post quartermaster sergeants shall, so far as practicable, perform the duties of storekeepers and clerks, in lieu of citizen employees. The post quartermaster sergeants shall be subject to the rules and articles of war and shall receive for their services the same pay and allowances as ordnance sergeants.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 109).*

#### THE PROCUREMENT OF SUPPLIES.<sup>2</sup>

Procurement  
of supplies.  
Sec. 3716, R. S.

**539.** The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific Coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific Coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon.

Purchases;  
how made.  
Emergency  
purchases.  
July 5, 1884, v.  
23, p. 109.

**540.** That hereafter all purchases of regular and miscellaneous supplies for the Army furnished for the Quartermasters Department and by the Commissary Department, for immediate use, shall be made by the officers of such department, under the direction of the Secretary of War,

<sup>1</sup> For corps of Army service men, see chapter entitled THE MILITARY ACADEMY.

<sup>2</sup> For general provisions on this subject, see the chapter entitled CONTRACTS AND PURCHASES; see also, for expenditures upon building at military posts, the chapter entitled THE PUBLIC LANDS, MILITARY RESERVATIONS, AND MILITARY POSTS. See, also, in respect to the construction of buildings at military posts, paragraphs 569 and 570, *post*.

at the places nearest the points where they are needed, the conditions of cost and quality being equal: *Provided also*, That all purchases of said supplies, except in cases of emergency, which must be at once reported to the Secretary of War for his approval, shall be made by contract after public notice of not less than ten days for small amounts for immediate use, and of not less than from thirty to sixty days whenever, in the opinion of the Secretary of War, the circumstances of the case and conditions of the service shall warrant such extension of time. The award in every case shall be made to the lowest responsible bidder for the best and most suitable article, the right being reserved to reject any and all bids.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 109).*

541. That for the current year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bake-house to carry on post bakeries; for the necessary furniture, text-books, paper, and equipments of the post schools; for the tableware and mess furniture for kitchens and mess-halls; \* \* \* each and all for the use of the enlisted men of the Army. *Acts of June 13, 1890 (26 Stat. L., 152), July 16, 1892 (27 Stat. L., 178).*

Expenses of bakeries, post schools, messes, etc.  
June 13, 1890, v. 26, p. 152; July 16, 1892, v. 27, p. 178.

542. That hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892 (27 Stat. L., 178).*

Post gardens and exchanges.  
July 16, 1892, v. 27, p. 178.

543. That hereafter no part of the appropriations for the Quartermaster's Department shall be expended on printing unless the same shall be done by contract, after due notice and competition, except in such cases as the emergency will not admit of the giving notice for competition.<sup>2</sup> *Act of February 12, 1895 (28 Stat. L., 659).*

Printing.  
Feb. 12, 1891, v. 28, p. 659.

<sup>1</sup>See, also, act of February 12, 1895, paragraph 1164, post, which provides "that after advertisement all the supplies for the use of the various departments and posts of the Army and of all branches of the Army service shall, hereafter, be purchased where the same can be purchased the cheapest, quality, cost of transportation, and the interests of the Government considered, except that purchases may be made in open market, in the manner common among business men, when the aggregate amount required does not exceed two hundred dollars, but every such purchase shall be immediately reported to the Secretary of War." (28 Stat. L., 659.)

The requirement of section 229 of the Revised Statutes that the Secretary of War shall lay before Congress, at the commencement of each regular session, a statement of all contracts and purchases made by him, or under his direction, during the year preceding; and so much of the act of July 5, 1884, as requires the Quartermaster-General and the Commissary-General of Subsistence to report all purchases made by their Departments, with cost price and place of delivery, to the Secretary of War for transmission to Congress annually, were repealed by the act of March 2, 1895 (28 Stat. L., 787).

<sup>2</sup>This provision has been embodied in the several acts of appropriation for the support of the Army since that of June 30, 1886. (24 Stat. L., 96.)

## TRANSPORTATION.

Transportation  
of troops, etc.  
Jan. 31, 1862, c.  
15, s. 4, v. 12, p.  
334.

Sec. 220, R. S.

544. The transportation of troops, munitions of war, equipments, military property, and stores, throughout the United States, shall be under the immediate control and supervision of the Secretary of War and such agents as he may appoint.<sup>1</sup>

Transportation  
in kind to offi-  
cers.  
Feb. 12, 1895, v.  
28, p. 657.

545. That the transportation furnished by the Quartermaster's Department to officers traveling without troops shall be limited to transportation in kind not including sleeping or parlor car accommodations, over free roads, over bond-aided Pacific railroads, and by conveyance belonging to said Department.<sup>2</sup> *Act of February 12, 1895 (28 Stat. L., 657).*

<sup>1</sup> See chapter entitled CONTRACTS AND PURCHASES.

<sup>2</sup> For allowances to officers and others traveling on duty without troops, see the title "Mileage," in the chapter entitled THE PAY DEPARTMENT.

## TRANSPORTATION OF PERSONS.

The transportation of troops, singly or in organized bodies, is regulated by the provisions of this paragraph. The transportation of civilian employees and their reimbursement for traveling expenses are controlled by the following paragraphs of the Army Regulations of 1895:

## TRAVELING EXPENSES

For authorized journeys of civilian employees of any branch of the military service transportation requests will be obtained when practicable, but will be obtained in every case for travel over bond aided railroads. (Par. 729, A. R., 1895.)

Reimbursement of actual expenses when traveling under competent orders will be allowed under the following heads, to civilians in the employ of any branch of the military service, excepting the expert accountant of the Inspector General's Department, paymasters' clerks, and those mentioned in the next succeeding paragraph, viz:

1. Cost of transportation (excluding parlor-car fare) over the shortest usually traveled route, when it was impracticable to furnish transportation in kind on transportation requests.

2. Cost of transfers to and from railroad stations, not exceeding 50 cents for each transfer.

3. Cost of one double berth in a sleeping car, or customary state-room accommodation on boats and steamers when extra charge is made therefor.

4. Cost of meals, not exceeding \$3 per day, while en route, when meals are not included in the transportation fare paid; and not exceeding \$3 per day for meals and lodgings during necessary delay en route.

5. Cost of meals and lodgings, not exceeding \$3 per day, while on duty at places designated in the orders for the performance of temporary duty.

Veterinary surgeons of cavalry regiments traveling under proper orders, in accordance with paragraph 185, are not entitled to reimbursement under the fifth heading above given. (Par. 730, *ibid.*)

Laborers, teamsters, and employees of similar character, traveling under competent orders, will be entitled to such actual and necessary expenses of travel and subsistence as may be authorized by the chief of bureau which pays the accounts. Those in receipt of a ration under paragraph 1252 will not be allowed commutation therefor. If it be impracticable for them to carry rations in kind, rations will not be drawn for the period during which they are traveling. (Par. 731, *ibid.*)

None but the authorized items of traveling expenses of civilians will be allowed. They will in all cases be set forth in detail in each voucher for reimbursement supported by oath and, when practicable, by receipts. (Par. 732, *ibid.*)

Paymasters' clerks and the expert accountant of the Inspector-General's Department, when traveling on duty, will, when transportation in kind cannot be furnished by the Quartermaster's Department, be reimbursed for cost of transportation paid by them, exclusive of parlor or sleeping car fares or transfers, and will receive in addition thereto, for all travel whether or not on transportation requests, 4 cents per mile for each mile necessarily traveled by them in the performance of duty—distance to be computed over the shortest usually traveled route. (Par. 733, *ibid.*)

Actual traveling expenses, as contemplated in the preceding paragraphs, are paid by the following departments, viz:

*Pay Department.*—To paymasters' clerks, the expert accountant of the Inspector-General's Department, civilians summoned as witnesses before, and authorized reporters of, military courts.

*Ordnance Department.*—To employees at arsenals and armories (cost of transportation included) from appropriations for the service of the Ordnance Department.

*Engineer Department.*—To employees on public works and fortifications (cost of transportation included) from appropriations made specifically for the work.

*Quartermaster's Department.*—To employees of the Quartermaster's and Subsist-

546. That in time of peace the number of draught and pack animals in the Quartermaster's Department of the Army shall not exceed five thousand, and that all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. *Act of July 5, 1884* (23 Stat. L., 109).

Limit to number of pack animals.

Transportation of stores, etc., to be by contract.

July 5, 1884, v. 23, p. 109. Sept. 22, 1888, v. 25, p. 486.

547. Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due

Means of transportation to be procured by contract.

July 5, 1884, v. 23, p. 110.

ence Departments, and other employees of the Army not above provided for. (Par. 734, *ibid.*) This department also furnishes transportation to maimed soldiers, etc., to enable them to procure artificial limbs (see paragraphs 686 and 687, *post*), and to soldiers who have been admitted to the Soldiers' Home.

When officers of the staff departments change station the transfer of clerks or other employees to the new stations at the expense of the United States is prohibited, except in cases of urgent necessity, for which the sanction of the Secretary of War will first be obtained. The Pay Department is excepted from this regulation. (Par. 735, *ibid.*)

#### TRANSPORTATION OF BAGGAGE.

In changing station an officer's authorized allowance of baggage (*a*) will be turned over to a quartermaster for transportation as freight by ordinary freight lines, unless otherwise ordered by the department commander or higher authority. No reimbursement will be made to an officer who, under such circumstances, sends packages by express or ships and pays for the transportation of his baggage. (Par. 1118, A. R., 1895.)

The baggage to be transported at public expense, including mess chests and personal baggage, upon change of station, will not exceed the following weights:

Rank.	In the field.	Changing station.
	<i>Pounds.</i>	<i>Pounds.</i>
Major-general.....	1,000	3,500
Brigadier general.....	700	2,800
Field officer.....	500	2,400
Captain.....	200	2,000
First lieutenant.....	150	1,700
Second lieutenant.....	150	1,500
Acting assistant surgeon.....	150	1,200
Veterinary surgeon.....	150	500
Post and regimental noncommissioned staff officer, hospital steward, chief musician, and sergeant of the Signal Corps, each.....		500

These allowances are in excess of the weights transported free of charge under the regular fares by public carriers. They may be reduced pro rata by the commanding officer, if necessary, and may, in special cases, be increased by the War Department on transports by water. Shipments of officers' allowance of baggage will in all cases be made at carrier's risk, including those over roads where tariffs provide for extra charge therefor. (Par. 1119, *ibid.*)

The Quartermaster's Department will transport the authorized change of station allowance of baggage and professional books and papers for officers or enlisted men upon retirement, or who die in the service, from their last duty stations to such places within the limits of the United States as may be the homes of their families, or as may be designated by their legal representatives or executors. (Par. 1120, *ibid.*)

Transportation of change of station allowance of baggage is authorized for such contract surgeons as may be employed, when they join for duty under the first order, and also on return to their homes on the termination of their contracts, if provided for in the contracts. Graduates of the Military Academy and officers promoted from the ranks will be furnished with transportation for field allowance of baggage on their first assignment to duty as commissioned officers. With these exceptions, transportation of baggage at public expense is not authorized for officers joining for duty on first appointment to military service, nor upon reinstatement or reappointment, nor to effect transfers from one company or regiment to another at the request of parties transferred. Officers ordered on temporary duty and officers going abroad as military attachés are not entitled to such transportation. An officer detailed as

<sup>a</sup>The term "baggage," in the military sense, and as used in statutes relating to the Army, embraces almost any article of personal property which does not exceed in weight the limit prescribed by Army Regulations or general orders. (3 Dig. Compt. Dec., 55.)

legal advertisement, except in cases of extreme emergency.  
*Act of July 5, 1884 (23 Stat. L., 110).*

Cavalry and  
 artillery horses  
 to be procured  
 by contract. In-  
 spection.  
 July 5, 1884, v.  
 23, p. 109.

**548.** Hereafter all purchases of horses, under appropriations for horses for the cavalry and artillery and for the Indian scouts, shall be made by contract, after legal advertisement, by the Quartermaster's Department, under instructions from the Secretary of War, the horses to be inspected under the orders of the general commanding the Army and no horse shall be received and paid for until duly inspected.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 109).*

Limit as to  
 number of horses  
 for mounted  
 service.  
 Feb. 12, 1895, v.  
 28, p. 660.

**549.** That the number of horses purchased under this appropriation, added to the number on hand, shall not at any time exceed the number of enlisted men and Indian scouts in the mounted service; and that no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such Department, all under the direction and authority of the Secretary of War. *Act of February 12, 1895 (28 Stat. L., 660).*

Supplies to  
 naval and marine  
 detachments.

**550.** The officers of the Quartermaster's Department shall, upon the requisition of the naval or marine officer

attaché, however, is entitled to have his full allowance transported from the post he leaves to his home, or to the nearest convenient place of storage, and upon resuming duty in this country from such place of storage to his post of duty. While on journeys as an attaché, the cost of transporting his personal baggage can not be paid by the Quartermaster's Department. (Par. 1121, *ibid.*)

The Quartermaster's Department will furnish transportation for the prescribed regimental and company desks, for the books, papers, and instruments of staff officers necessary to the performance of their duties, and for the medical chests of medical officers; also for the professional books of officers changing station, officers ordered home for retirement, graduates of the Military Academy, and officers joining on first appointment, which they certify belong to them and pertain to their official duties; also the professional books of hospital stewards changing station, not exceeding two hundred pounds in weight. Invoices of packages turned over to the shipping officer will be accompanied by the certificate of the officer as to character of books, and a certified copy will be attached to the bill of lading issued at the initial point of shipment. The certificate as to the character of the books of a hospital steward will be given by the medical officer under whom he last served. (Par. 1122, *ibid.*)

The Quartermaster's Department will transport for officers changing station the number of horses for which they are legally entitled to forage, and an attendant to accompany the horses when necessary, subject to the following restrictions:

(1) That the expense paid by the United States shall not exceed \$50 for each horse transported. The cost of such shipment will be ascertained in advance, and if found to exceed \$50 for each horse, including transportation of attendant, if any, the excess must be prepaid by the owner, who must also pay all the expenses of the attendant other than his transportation.

(2) That the horses are owned by the officer and were used by him in the public service at the station from which he is ordered to move.

(3) The horses of retired officers or officers ordered to their homes to await retirement, or officers ordered on recruiting service or college detail, or to attend schools of instruction as student officers, or to effect a voluntary transfer, will not be transported at public expense. (Par. 1069, *ibid.*)

The Quartermaster's Department may provide transportation of baggage for enlisted men traveling under orders without troops, not to exceed the following weights:

Noncommissioned officers .....	pounds..	100
Privates of the Hospital Corps .....	do.....	100
Other privates .....	do.....	50

This allowance will accompany each man on the conveyance by which he is transported, and will include the number of pounds of baggage carried free on the passage ticket. (Par. 1101, *ibid.*)

<sup>1</sup> So much of the act of July 5, 1884, as requires these purchases to be reported to the Secretary of War for transmission to Congress was repealed by the act of March 2, 1895 (28 Stat. L., 787).

commanding any detachment of seamen or marines under orders to act on shore, in cooperation with land troops, and during the time such detachment is so acting or proceeding to act, furnish the officers and seamen with camp equipage, together with transportation for said officers, seamen, and marines, their baggage, provisions, and cannon, and shall furnish the naval officer commanding any such detachment, and his necessary aids, with horses, accouterments, and forage.

551. That hereafter the Quartermaster-General and his officers, under his instructions, wherever stationed, shall receive, transport and be responsible for all property turned over to them, or any one of them, by the officers or agents of any Government survey, for the National Museum, or for the civil or naval departments of the Government, in Washington or elsewhere, under the regulations governing the transportation of Army supplies, the amount paid for such transportation to be refunded or paid by the Bureau to which such property or stores pertain. *Act of July 5, 1884 (23 Stat. L., 110).*

Dec. 15, 1814 c.  
13, ss. 1, 2, v. 3, p.  
151.  
Sec. 1135, R. S.

Property for  
Government sur-  
veys, National  
Museum, etc., to  
be transported.  
July 5, 1884, v.  
23, p. 110.

#### TRANSPORTATION BY LAND GRANT AND BOND AIDED RAILROADS.

552. For the payment of army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of the full amount of service be paid, two million four hundred thousand dollars: *Provided*, That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large, and shall be accepted as in full for all demands for such service: *Provided further*, That in expending the money appropriated by this Act, a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post-route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of troops and munitions of war and military supplies and property over such aided

Payments to  
land-grant rail-  
roads.  
Mar. 16, 1896, v.  
29, p. 66.

railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such troops and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at the time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service.<sup>1</sup> *Act of March 16, 1896 (29 Stat. L., 66).*

#### CIVILIAN EMPLOYEES.

Number of civilian employees limited.

Mar. 3, 1885, v. 23, p. 359.

**553.** That the whole number of civilian employees, including agents, superintendents, mechanics, packers, teamsters, train-masters, and so forth, paid from this appropriation for transportation, shall not at any one time hereafter exceed one thousand, nor shall any of said employees be graded for salary above fourth-class clerks of the Army Regulations; and the grade of sixth-class clerk in the Quartermaster's Department is hereby abolished.<sup>2</sup> *Act of March 3, 1885 (23 Stat. L., 359).*

Salaries of civilian employees.

Feb. 12, 1895, v. 28, p. 661.

**554.** That no more than one million dollars of the sums appropriated by this Act shall be paid out for the services of civilian employees in the Quartermaster's Department, including those heretofore paid out of the funds appropriated for regular supplies, incidental expenses, barracks and quarters, army transportation, clothing, camp and garrison equipage; that no employee paid therefrom shall receive as salary more than one hundred and fifty dollars per month, unless the same shall be specially fixed by law; and no part of the moneys so appropriated shall be paid for commutation of fuel and for quarters to officers or enlisted men.<sup>3</sup> *Act of February 12, 1895 (28 Stat. L., 661).*

<sup>1</sup> This provision has been incorporated in the several acts of appropriation since that of February 24, 1891 (26 Stat. L., 776). For regulations respecting the transportation of persons and supplies over land-grant or bond-aided roads see paragraphs 1091, 1093, 1129, 1146, 1161, and 1162, Army Regulations of 1895; see also chapter entitled THE PAY DEPARTMENT.

<sup>2</sup> The act of March 3, 1885, contained a similar provision.

<sup>3</sup> The amount to be expended for the payment of civilian employees was fixed at \$1,600,000 by the act of March 3, 1883 (22 Stat. L., 459); at \$1,500,000 by the acts of July 5, 1884 (23 Stat. L., 111), March 3, 1885 (23 Stat. L., 360), and June 30, 1886 (24 Stat. L., 98); at \$1,300,000 by the acts of February 9, 1887 (24 Stat. L., 399), September 22, 1888 (25 Stat. L., 486), March 2, 1889 (25 Stat. L., 830), June 13, 1890 (26 Stat. L., 154), and February 24, 1891 (26 Stat. L., 776); at \$1,200,000 by the acts of July 16, 1892 (27 Stat. L., 180), and February 27, 1893 (27 Stat. L., 484); at \$1,100,000 by the act of August 6, 1894 (28 Stat. L., 240), and at \$1,000,000 by the acts of February 12, 1895 (28 Stat. L., 661), and March 16, 1896 (29 Stat. L., 66).

WORKING PARTIES AND EXTRA DUTY PAY.<sup>1</sup>

**555.** When soldiers are detailed for employment as artificers or laborers in the construction of permanent military works, public roads, or other constant labor of not less than ten days' duration, they shall receive, in addition to their regular pay, the following compensation: [Fifty cents per day for mechanics, artisans, school-teachers, and thirty-five cents per day for other clerks, teamsters, laborers, and others.] This allowance of extra pay shall not apply to the troops of the Ordnance Department.

Extra duty;  
rates of pay.  
July 13, 1866, c.  
176, s. 7, v. 14, p.  
93; Feb. 1, 1873,  
c. 88, v. 17, p. 422;  
Mar. 3, 1885, v. 23,  
p. 356. July 5,  
1884, v. 23, p. 110.  
Sec. 1287, R. S.

**556.** Working parties of soldiers shall be detailed for employment as artificers or laborers, in the construction of permanent military works or public roads, or in other constant labor only upon the written order of a commanding officer, when such detail is for ten or more days.

Details to be in  
writing.  
July 13, 1866, c.  
176, s. 7, v. 14, p.  
93.  
Sec. 1235, R. S.

**557.** Details to special service from forces in the field shall be made only with the consent of the commanding officer of the forces.

Details in the  
field; how made.  
Mar. 3, 1863, c.  
75, s. 35, v. 12, p.  
736.  
Sec. 1236, R. S.

<sup>1</sup>WORKING PARTIES—EXTRA AND SPECIAL DUTY MEN.

Troops will not be employed in labors that interfere with their military duties except in cases of necessity. (Par. 163, A. R. 1895.)

Enlisted men detailed to perform specific services which remove them temporarily from the ordinary duty roster of the organization to which they belong will be reported on extra duty if receiving increased compensation therefor, otherwise, on special duty. They will not be placed on extra duty except as bakers or to perform the necessary routine services in the Quartermaster's and Subsistence Departments, without the sanction of the department commander, nor will they be employed on extra duty for labor in camp or garrison which can be properly performed by fatigue parties. Allotments of funds for payment of extra-duty men at department headquarters and depots under the control of department commanders will be made only with the approval of the Secretary of War. Duty of a military character must be performed without extra compensation. (Par. 164, *ibid.*)

Enlisted men detailed by name on extra duty under competent authority at constant labor for not less than ten days are entitled to receive extra-duty pay at the following rates: For services as mechanics, artisans, and school-teachers, 50 cents per day; as bakers, according to paragraph 306; as overseers, clerks, teamsters, laborers, and for all other extra-duty services, 35 cents per day. (Par. 165, *ibid.*)

The detail of a noncommissioned officer on extra duty other than that of overseer will not be made without the approval of the Secretary of War. A noncommissioned officer will not be detailed on any duty inconsistent with his rank and position in the military service. (Par. 166, *ibid.*)

Noncommissioned staff officers and enlisted men of the several staff departments will not be detailed on extra duty without authority from the Secretary of War. They are not entitled to extra-duty pay for services rendered in their respective departments. (Par. 167, *ibid.*)

Company artificers, farriers, blacksmiths, saddlers, and wagoners will not receive extra-duty pay unless detailed on extra duty in the Quartermaster's Department, wholly disconnected from their companies. (Par. 168, *ibid.*)

Soldiers on extra duty will be paid the extra rates of pay allowed by law for the duty performed and for the exact number of days employed; and no greater number of men will be employed on extra duty at any time than can be paid the full legal rates for the time employed from the funds provided. Payments made in violation of the above rules will be charged against the officers who ordered the details. (Par. 169, *ibid.*)

Extra-duty men will be held to such hours of labor as may be expedient and necessary; but, except in case of urgent public necessity, as in military operations, eight hours will be considered a day's work. For all hours employed beyond that number the soldier will receive additional compensation—the extra hours being computed as fractions of a day of eight hours' duration. (Par. 171, *ibid.*)

Details of enlisted men for extra and special duty will be limited to actual necessities, which will be determined by post commanders in accordance with limits published in orders from the War Department. Allotments to posts of funds for extra-



Rates of extra-duty pay.  
July 5, 1884, v. 23, p. 110.

**558.** Extra-duty pay hereafter shall be at the rate of fifty cents per day for mechanics, artisans, school-teachers, and clerks at Army, division, and department headquarters, and thirty-five cents per day for other clerks, teamsters, laborers, and others.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 110).*

#### FUEL AND FORAGE.

Allowance of fuel and forage.  
Sec. 8, June 17, 1878, v. 20, p. 150.

**559.** Allowance of or commutation for fuel to commissioned officers is hereby prohibited; but fuel may be furnished to the officers of the Army by the Quartermaster's Department, for the actual use of such officers only, at the rate of three dollars per cord for standard oak wood, or at an equivalent rate for other kinds of fuel, according to the regulations now in existence;<sup>1</sup> and forage in kind may be furnished to the officers of the Army, by the Quartermaster's Department, only for horses owned and actually kept by such officers in the performance of their official military duties when on duty with troops in the field or at such military posts west of the Mississippi River, as may be from time to time designated by the Secretary of War, and not otherwise as follows:

To the General, five horses;

To the Lieutenant-General, four horses;

To a major-general, three horses;

To a brigadier-general, three horses;

To a colonel, two horses;

To a lieutenant-colonel, two horses;

To a major, two horses;

To a captain (mounted), two horses;

To a lieutenant (mounted), two horses;

To an adjutant, two horses;

To a regimental quartermaster, two horses.<sup>2</sup> *Sec. 8, act of June 17, 1878 (20 Stat. L., 150).*

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duty pay are made by department commanders from allotments made to departments for the purpose, and must not be exceeded without special authority from department commanders. (Par. 172, *ibid.*)

<sup>1</sup> Enlisted men of the several staff departments are not entitled to extra-duty pay for services rendered in the department to which they belong. To entitle them to such compensation they must be detailed by competent orders and must have performed duty in another department than that in which they are enlisted. Under existing orders enlisted men of the Ordnance Department are entitled to extra-duty pay when performing duty in the Quartermaster's Department. (Circular II, A. G. O., 1886; I, *ibid.*, 1887, and par. 167, A. R., 1895.)

Clerical services at Army, division, and department headquarters have, since the act of July 29, 1886 (24 Stat. L., 167), been performed by a corps of general service clerks and messengers. By the act of August 6, 1894, this force ceased to exist as a part of the enlisted strength of the Army.

<sup>2</sup> This statute, which replaces section 1271, Revised Statutes, contains the added condition that horses shall not only be "actually kept" but "owned" by officers in the performance of their military duties.

The right conferred upon officers of the Army by the act of June 18, 1878 (20 Stat. L., 150), to purchase fuel for their actual use only, in the manner and at the terms prescribed by said act, pertains to all officers of the Army irrespective of the nature of the duties upon which they are engaged. No part of the cost of fuel so sold

560. That there shall be no discrimination in the issue of forage against officers serving east of the Mississippi River, provided they are required by law to be mounted, and actually keep and own their animals. *Act of February 24, 1881* (21 Stat. L., 347).

No discrimination to officers serving east of Mississippi River.  
Feb. 24, 1881, v. 21, p. 347.

## CLOTHING.

561. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.

Purchases of clothing.  
Sec. 3732, R. S.

562. The President may prescribe the uniform of the Army and quantity and kind of clothing which shall be issued annually to the troops of the United States.<sup>1</sup>

Uniform to be prescribed by the President.

563. The money value of all clothing overdrawn by the soldier beyond his allowance shall be charged against him, every six months, on the muster-roll of his company, or on his final statements if sooner discharged, and he shall receive pay for such articles of clothing as have not been issued to him in any year, or which may be due to him at the time of his discharge, according to the annual estimated value thereof. The amount due him for clothing, when he draws less than his allowance, shall not be paid to him until his final discharge from the service.<sup>2</sup>

Apr. 24, 1816, c. 69, s. 7, v. 3, p. 298.  
Sec. 1296, R. S.  
Clothing allowances.  
Apr. 24, 1816, c. 69, ss. 7, 8, v. 4, p. 298; May 15, 1872, c. 161, s. 3, v. 17, p. 117.  
Sec. 1302, R. S.

is properly chargeable to the appropriation for any public work, unless provision is expressly made therein for such cost. (3 Dig. Compt. Dec., 171.)

The forage ration for a horse is 14 pounds of hay and 12 pounds of oats, corn, or barley; for a mule, 14 pounds of hay and 9 pounds of oats, corn, or barley. Department commanders will reduce the forage ration when necessary. (Par. 1041, A. R., 1895.)

One hundred pounds of straw per month is allowed for bedding to each horse or mule in public service. At posts where straw is not furnished, hay will be issued and used for bedding. (Par. 1049, *ibid.*)

Forage is furnished only to officers for the horses owned and actually kept by them in the performance of their official duties when serving with troops in the field or at military posts and stations, and for the following number: To a lieutenant-general, four; to a major general or a brigadier-general, three; to a colonel, lieutenant-colonel, major, captain, or lieutenant, mounted, and regimental adjutant and quartermaster, each two. (Par. 1044, *ibid.*)

Mounted officers will not use public horses and at the same time draw forage for those they own; nor will they use public animals except as authorized by regulations. Should circumstances render it necessary, an officer may be temporarily furnished public horses, but during such period he will not be permitted to draw forage for a private horse. (Par. 1045, *ibid.*)

An officer not mounted may purchase forage for two horses kept for his own use, for which he will be charged cost, including transportation. The sale of forage to mounted officers is forbidden. (Par. 1046, *ibid.*)

<sup>1</sup>A table showing the price of clothing and equipage for the Army, the allowance of clothing in kind to each soldier for each year of his enlistment, and his clothing money allowance for each year and day thereof, also the allowance of equipage to officers and enlisted men, will be published in orders. (Par. 1163, A. R., 1895.)

<sup>2</sup>Each soldier's clothing account will be kept by the company commander in the company clothing book. The account will show the money value of the clothing received by the soldier at each issue, and his receipt therefor will be taken in the book. (Par. 1180, A. R., 1895.)

Company and detachment commanders will settle the clothing account of every enlisted man of their respective commands six months after the date of his enlistment, and thereafter on June 30 and December 31 of each year. The entire amount found due the United States for the periods embracing the dates of settlement will

Clothing-balances payable at discharge.

May 15, 1872, c. 61, s. 5, v. 17, p. 117.

Sec. 1308, R. S.

564. The amounts of deposits and clothing-balances accumulating to the soldier's credit under sections thirteen hundred and two and thirteen hundred and five, shall, when payable to him upon his discharge, be paid out of the appropriations for "pay of the Army" for the then current fiscal year.

Gratuitous issues.

Mar. 12, 1868, res. 19, v. 15, p. 250.

Sec. 1298, R. S.

565. The Secretary of War may, on the recommendation of the Surgeon-General, order gratuitous issues of clothing to soldiers who have had contagious diseases, and to hospital attendants who have nursed them, to replace any articles of their clothing destroyed by order of the proper medical officers to prevent contagion.<sup>1</sup>

Selling or spoiling clothing, etc.; penalty.

July 27, 1892, v. 27, p. 277.

17 Art. War.

566. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accouterments shall be punished as a court-martial may adjudge, subject to such limitation as may be prescribed by the President by virtue of the power vested in him. [*Seventeenth Article of War.*]

be charged to the soldier upon the muster and pay rolls. The money allowance of clothing for the first year will be allotted by half years. (Par. 1181, *ibid.*)

The balance due the soldier at either of these dates will be credited to him upon the company clothing book. It will not be placed upon the muster and pay rolls, but the final balance due at date of discharge will be entered upon the final statements. In case of transfer, the balance due the soldier or the United States will be entered on the descriptive list. All balances of this character will be stated in words and figures. (Par. 1182, *ibid.*)

The clothing account of a soldier who deserts should be settled in full to the date of desertion. The balance due him or the United States will be entered on the next muster and pay rolls after date of desertion. The amount due the United States or the soldier at date of desertion should be ascertained by crediting the soldier with clothing allowance from date of last clothing settlement to the date of desertion (excluding the day of desertion) and debiting him with the money value of all clothing drawn by him: the difference between the two amounts will be the amount due the United States or the soldier. (Par. 1183, *ibid.*)

A deserter is entitled to clothing allowance from the date he surrenders or is apprehended, and the amount due him will be computed from the tables then and subsequently in force. A new clothing account will be opened without reference to his account at date of desertion. (Par. 1184, *ibid.*)

Clothing allowance accruing to a soldier after return to the service from desertion will not be used to reduce the amount of the soldier's indebtedness at date of desertion; the full amount of the soldier's indebtedness must be charged on the roll, to be deducted by the paymaster when he settles the soldier's account. (Par. 1185, *ibid.*)

Section 1297, Revised Statutes, forbidding the allowance of clothing to ordnance sergeants, was repealed by the act of July 14, 1892. (27 Stat. L., 578.)

#### <sup>1</sup> GRATUITOUS ISSUES.

Commanding officers may order necessary issues of clothing to military prisoners who have no clothing allowance, from deserters' or other damaged clothing when there is such in store or from clothing specially provided for the purpose. The receipt of the officer in charge of the prisoners will be the quartermaster's voucher for such issue. (Par. 1193, A. R., 1895.)

Gratuitous issues of clothing may be made, under the provisions of section 1298, Revised Statutes, to replace articles destroyed to prevent the spread of contagious diseases. (Par. 1194, *ibid.*)

Should it become necessary to issue new clothing for use in the burial of a deceased soldier, as in the case of a man who dies away from his proper command and under circumstances rendering such issues imperatively necessary, the expense of the issue will be borne by the United States, and the clothing will be dropped from the returns of the issuing officer on the orders of the commanding officer, which must recite the necessity for the issue. (Par. 1195, *ibid.*)

#### LAUNDRY WORK FOR RECRUITS AT DEPOTS.

The Quartermaster's Department is authorized to pay from the appropriation for clothing and equipage a sum not exceeding \$1.50 for the laundry work of each recruit at rendezvous stations who has no funds of his own. The expenditure will be charged on the clothing account of the recruit and so noted on his descriptive and assignment card. (Par. 1192, A. R., 1895.)

## ALTERING CLOTHING.

**567.** It shall be lawful for the commanding officer of each regiment, whenever it may be necessary, to cause the coats, vests, and overalls or breeches which may from time to time be issued to and for his regiment to be altered and new-made, so as to better to fit them to the persons respectively for whose use they shall be delivered; and for defraying the expense of such alterations, to cause to be deducted and applied out of the pay of such persons a sum or sums not exceeding twenty five cents for each coat, eight cents for each vest and for each pair of overalls or breeches.

Altering clothing.  
Feb. 27, 1877, c.  
69, v. 19, p. 243.  
Sec. 1220, R. S.

**568.** That hereafter the regimental price fixed for altering and fitting soldiers clothing shall not exceed the cost of making the same at the clothing depots. *Act of March 2, 1889 (25 Stat. L., 831).*

Limit of cost.  
Mar. 2, 1889, v.  
25, 831.

## BARRACKS AND QUARTERS.

**569.** Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed twenty thousand dollars, shall be erected unless by special authority of Congress.<sup>1</sup>

Permanent barracks.  
Mar. 3, 1859, c.  
83, s. 1, v. 11, p.  
432.  
Sec. 1136, R. S.

**570.** That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates of the Quartermaster's Department, and the erection, construction, and repairs of all buildings and other public structures in the Quartermaster's Department shall, so far as may be practicable, be made by contract, after due legal advertisement.<sup>1</sup> *Act of February 27, 1893 (27 Stat. L., 484).*

Limit on expenditures.

Approval of Secretary of War in cases of improvements exceeding, etc.  
Feb. 27, 1893, v.  
27, p. 484.

**571.** At all posts and stations where there are public quarters belonging to the United States, officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms as is now allowed to such grade by the

Quarters in kind to be furnished to officers.  
Sec. 9, June 17,  
1878, v. 20, p. 144.

<sup>1</sup>The same statute contains the requirement that the posts at which quarters for hospital stewards are to be constructed shall be designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement whenever practicable. (See paragraph 692, *post.*)

rules and regulations of the Army.<sup>1</sup> *Sec. 9, act of June 17, 1878 (20 Stat. L., 144).*

<sup>1</sup> The following table shows the number of rooms, the quantity of fuel, and the allowance of cooking and heating stoves to be supplied for the use of officers and men in quarters and barracks:

	Rooms.			Cords of wood per month.	Increased allowance from September to April, both inclusive.		For quarters.	For office.
	As quarters.	As kitchen.	As office.		From May 1 to Aug. 31.	From Sept. 1 to Apr. 30.		
A lieutenant-general or major-general...	5	1	...	1	5	1 $\frac{1}{2}$	1	...
A brigadier-general or colonel .....	4	1	...	1	4	1	1	...
A lieutenant-colonel or major .....	3	1	...	1	3 $\frac{1}{2}$	1	1	...
A captain or chaplain .....	2	1	...	...	3	1	1	...
A lieutenant .....	1	1	...	...	2	1	1	...
The Commanding General of the Army.	...	...	3	...	3	1	...	3
The commanding officer of a territorial department .....	...	2	...	...	2	...	...	2
The aids to the commanding officer of a territorial department .....	...	1	...	...	1	...	...	1
An assistant or deputy quartermaster-general, an assistant commissary-general of subsistence, an assistant surgeon-general, the assistant and deputy paymaster-general, and the chief quartermaster and chief commissary at the headquarters of a territorial department, each .....	...	2	...	...	2	...	...	2
The commanding officer of a regiment or post, or paymaster, quartermaster, assistant quartermaster, commissary, and military storekeeper, each .....	...	1	...	...	1	...	...	1
An assistant adjutant-general, an inspector-general, an acting inspector-general, an engineer officer,* an ordnance officer,* a signal officer, a judge-advocate or an acting judge-advocate, and the senior medical officer, when stationed on duty at any place not in the field,* each .....	...	1	...	...	1	...	...	1
An acting assistant quartermaster, an acting commissary of subsistence, an adjutant, when approved by the Quartermaster-General, each .....	...	1	...	...	1	...	...	1
A sergeant-major, quartermaster-sergeant, sergeant of the post noncommissioned staff, hospital steward, veterinary surgeon, signal sergeant,† and chief musician, each .....	1	...	...	...	1	...	1	...
Superintendent national cemetery .....	...	...	...	...	1	...	...	...
Each noncommissioned officer, musician, private, and hospital matron .....	...	...	...	...	1	...	...	...
Each necessary fire for the sick in hospital, each dispensary and hospital mess room, at a military post or station, to be regulated by the surgeon and commanding officer, not exceeding .....	...	...	...	...	2	...	1	...
For general hospitals, when necessary, not exceeding, for each bed .....	...	...	...	...	1	...	...	...
Each guard fire, to be regulated by the commanding officer, not exceeding .....	...	...	...	...	3	...	1	...
Each necessary fire for military courts or boards, at a rate not exceeding .....	...	...	...	...	2	...	1	...
Storehouse of commissary and quartermaster, when necessary, not exceeding for each .....	...	...	...	...	1	...	1	...

\* Except at Military Academy.

† Except when serving in a detachment.

572. Hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent. *Act of February 27, 1893 (27 Stat. L., 478).*

Officers temporarily absent in the field not to lose right to quarters. Feb. 27, 1893, v. 27, p. 478.

	Rooms.			Cords of wood per month.	Increased allowance from September to April, both inclusive.	For quarters.	For office.
	As quarters.	As kitchen.	As office.				
Each employee of the Quartermaster's, Subsistence, or Medical Department to whom subsistence in kind is issued by the Government .....				From May 1 to Aug. 31.	From Sept. 1 to Apr. 30.	Between 36th and 43d deg. N. latitude, one-fourth.	North of 43d deg., one-third.
For library, reading room, schoolroom, chapel, and gymnasium, 1 heating stove for each, and when the garrison exceeds 150 enlisted men, 2 heating stoves, and such quantity of fuel for the same as may be certified to as necessary by the officers in charge and approved by the commanding officer .....							
For a company: 2 large stoves in dormitory, 1 large stove in each mess room and day room, 1 small stove for each of the two rooms for noncommissioned officers, 1 small stove for the library, and 1 cooking stove or range sufficient to cook its food .....							
Each hospital kitchen .....							
For each authorized room as quarters for civilian employees .....							
For each six civilian employees to whom fuel is allowed .....							
For mess of civilian employees .....							
For telegraph office .....							
For each blacksmith, carpenter, and saddler shop .....							

(Par. 1006, A. R., 1895.)

#### ALLOWANCE AND ASSIGNMENT OF QUARTERS.

At each post and station where there are public quarters in buildings belonging to the United States, the quartermaster, under direction of the commanding officer, will allot to each officer the quarters to which his rank entitles him. (Par. 984, A. R., 1895.)

An officer reporting for duty at a post will, immediately upon his arrival, make written application to the commanding officer for quarters. If in command of troops he will apply for quarters for himself, for his subordinate officers, and the enlisted men of his command. The application will be accompanied by a copy of the order directing him to report at the station, and will be referred to the quartermaster for proper action under such instructions as the commanding officer may indorse thereon. (Par. 987, *ibid.*)

An officer will not occupy more than his proper allowance of quarters, except by permission of the commanding officer when there is an excess of quarters at the station. The allowance will be reduced pro rata by the commanding officer when the number of officers and troops present makes it necessary. If the public buildings are inadequate, the commanding officer will apply, through the department commander, to the Secretary of War for authority to hire necessary quarters. (Par. 988, *ibid.*)

Officers on duty without troops at stations where there are public quarters will be furnished them in kind. If insufficient, application for authority to hire quarters will be made as directed in paragraph 988. (Par. 989, *ibid.*)

An appropriate set of quarters, equal to those of a captain, will be set apart

## ACCOUNTABILITY FOR CLOTHING.

Returns of clothing and equipage.

May 18, 1826, c. 74, s. 2, v. 4, p. 174; Feb. 27, 1877, v. 69, p. 243; Mar. 29, 1894, v. 28, p. 47.

Sec. 1221, R. S.

Uniforms and equipments not to be sold, bartered, exchanged, loaned, etc.

Mar. 3, 1863, c. 75, s. 23, v. 12, p. 735.

Sec. 3748, R. S.

573. Every officer who receives clothing or camp equipage for the use of his command, or for issue to the troops, shall render to the Quartermaster-General, at the expiration of each regular quarter of the year, quarterly returns of such supplies, according to the forms which may be prescribed, accompanied by the requisite vouchers for any issues which shall have been made.<sup>1</sup>

574. The clothes, arms, military outfits, and accouterments furnished by the United States to any soldier shall not be sold, bartered, exchanged, pledged, loaned, or given away; and no person not a soldier, or duly authorized officer of the United States, who has possession of any such clothes, arms, military outfits, or accouterments, so furnished, and which have been the subjects of any such sale, barter, exchange, pledge, loan, or gift, shall have any right, title, or interest therein; but the same may be seized and taken wherever found by any officer of the United States, civil or military, and shall thereupon be delivered to any quartermaster, or other officer authorized to receive the same. The possession of any such clothes, arms, military outfits, or accouterments by any person not a soldier or officer of the United States shall be presumptive evidence of such a sale, barter, exchange, pledge, loan, or gift.

permanently for the chaplain. He will not be displaced, except by a reduction when the quarters are insufficient for the garrison, and he will not then be entirely displaced, nor allowed to choose others. (Par. 991, *ibid*.)

An officer's right to quarters is solely one of occupancy; when he and his family cease to occupy them, except in case of temporary absence, they are open to selection by, and reassignment to some other officer on duty at the post. (Par. 992, *ibid*.)

When assigned to duty without troops or awaiting orders for the convenience of the Government, officers will be entitled to quarters, but in no case will they be furnished quarters at two stations at the same time. (Par. 993, *ibid*.)

For statutory provisions respecting commutation of quarters see the chapter entitled THE PAY DEPARTMENT. See also, for provisions respecting the construction of quarters for hospital stewards, paragraph 692, *post*.

## LOCKERS.

The Quartermaster's Department will provide in all permanent barracks a box locker for each enlisted man for his uniform and extra clothing. Each man will provide his own lock. (Par. 981, A. R., 1895.)

<sup>1</sup> The question of property accountability in the War Department is now regulated by the provisions of the act of March 29, 1894 (28 Stat. L., 47), which will be found in the chapter entitled THE PUBLIC PROPERTY.



## CHAPTER XVIII.

### THE SUBSISTENCE DEPARTMENT.

Par.	Par.
575. The Subsistence Department; organization.	586. Coffee and sugar ration to be issued weekly.
576. Duties.	587. Sales to officers and enlisted men. Credit sales.
577. Officers not to trade in articles for issue or sale.	588. Sales to be made at cost.
578. Subsistence to seamen and marines.	589. Sales of rations.
579. Post commissary-sergeants.	590. Sales of tobacco.
580. The ration.	591. Exceptional supplies.
581. Increase of the ration.	592. Proceeds of sales applicable to new purchases.
582. Enlisted men to receive one ration daily.	593. Proceeds of sales available for purchase of supplies.
583. No enlisted man to receive more than one ration daily.	594. Appropriations for subsistence applicable to purchase of stores for sale to officers, etc.
584. Matrons and nurses.	
585. Coffee and sugar commuted.	

575. The Subsistence Department of the Army shall consist of one Commissary-General of Subsistence, with the rank of brigadier-general; two assistant commissaries-general of subsistence, with the rank of colonel of cavalry; three assistant commissaries-general of subsistence, with the rank of lieutenant-colonel of cavalry; eight commissaries of subsistence, with the rank of major of cavalry; and eight commissaries of subsistence, with the rank of captain of cavalry.<sup>1</sup>

The Subsistence Department; organization.  
July 28, 1866, c. 299, s. 16, v. 14, p. 334; June 23, 1874, c. 458, s. 3, v. 18, p. 244; Feb. 12, 1895, v. 28, p. 656.  
Sec. 1140, R.S.

<sup>1</sup>The Department was reorganized by the act of June 23, 1874 (18 Stat. L., 244) which provided that the number of lieutenant-colonels should hereafter be fixed at three and the number of captains at twelve; by the act of February 12, 1895 (28 Stat. L., 656), the number of captains was reduced to eight. The requirement of the act of March 3, 1883 (22 Stat. L., 457), authorizing appointments to this Department from civil life, was repealed by the act of August 6, 1894 (28 Stat. L., 234). Appointments to the lowest grade are now required to be made from the next lower grade in the line of the Army. For general provisions respecting appointments and promotions in this Department, see the chapter entitled THE STAFF DEPARTMENTS.

#### GENERAL DUTIES.

The Subsistence Department, under the direction of the Secretary of War, provides for the distribution and expenditure of funds appropriated for subsisting enlisted men and for purchasing articles kept for sale to officers and enlisted men. The Commissary-General furnishes lists of articles authorized to be kept for sale, and gives instructions for procuring, distributing, issuing, selling, and accounting for all subsistence supplies. (Par. 1226, A. R., 1895.)

Subsistence supplies comprise—

(1) Subsistence stores, consisting of articles composing the ration and those furnished for sale to officers and enlisted men, also lantern candles for stable use, forage for beef cattle, and coarse salt for public animals and rebrining.

(2) Subsistence property, consisting of the necessary means for handling, preserving, issuing, selling, and accounting for these stores. (Par. 1230, *ibid.*)



Duties,  
Apr. 14, 1818, c.  
61, s. 7, v. 3, p.  
427; Mar. 3, 1835,  
c. 49, s. 1, v. 4, p.  
780.

Sec. 1141, R.S.

Officers not to  
trade in articles  
for issue or sale.

Apr. 14, 1818, c.  
61, s. 9, v. 3, p.  
427; Mar. 3, 1835,  
c. 49, s. 1, v. 4, p.  
780; Mar. 3, 1865,  
c. 81, s. 6, v. 13, p.  
497; July 28, 1866,  
c. 299, s. 25, v. 14,  
p. 336.

Sec. 1150, R.S.

Subsistence to  
seamen and mar-  
ines.

Sec. 1143, R.S.

Post commis-  
sary-sergeants.

Mar. 3, 1873, c.  
224, v. 17, p. 485.

Sec. 1142, R.S.

**576.** It shall be the duty of the officers of the Subsistence Department, under the direction of the Secretary of War, to purchase and issue to the Army such supplies as enter into the composition of the ration.<sup>1</sup>

**577.** No officer belonging to the Subsistence Department, or doing the duty of a subsistence officer, shall be concerned, directly or indirectly, in the purchase or sale of any article entering into the composition of the ration allowed to troops in the service of the United States, or of any article designated by the inspectors-general of the Army, and furnished for sale to officers and enlisted men at cost prices, or of tobacco furnished for sale to enlisted men, except on account of the United States; nor shall any such officer take or apply to his own use any gain or emolument for negotiating or transacting any business connected with the duties of his office, other than that which may be allowed by law.

**578.** The officers of the Subsistence Department shall, upon the requisition of the naval or marine officer commanding any detachment of seamen or marines under orders to act on shore, in co-operation with the land troops, and during the time such detachment is so acting or proceeding to act, furnish rations to the officers, seamen, and marines of the same.

#### POST COMMISSARY-SERGEANTS.

**579.** The Secretary of War is authorized to select from the sergeants of the line of the Army who shall have faithfully served therein five years, three years of which in the grade of non-commissioned officers, as many commissary-sergeants as the service may require, not to exceed one for each military post or place of deposit of subsistence supplies, whose duty it shall be to receive and preserve the subsistence supplies at the posts, under the direction of the proper officers of the Subsistence Department, and under such regulations as shall be prescribed by the Secretary of War. The commissary-sergeants hereby authorized shall be subject to the rules and articles of war, and shall receive for their services the same pay and allowances as ordnance-sergeants.<sup>2</sup>

<sup>1</sup> For general provisions respecting the procurement of supplies, see the chapter entitled CONTRACTS AND PURCHASES; see also the chapter entitled THE QUARTERMASTER'S DEPARTMENT.

<sup>2</sup> The act of June 30, 1882 (22 Stat. L., 123), authorizes the detail of one commissary-sergeant to act as assistant to the commissary of cadets at the Military Academy.

#### CIVIL EMPLOYEES.

The employment of civilians in the Subsistence Department is regulated by the annual acts of appropriation. The amount to be expended for such services was fixed at \$105,000 in the acts of March 3, 1883, July 5, 1884, March 3, 1885, and June 30, 1886; at \$110,000 by the acts of February 9, 1887, September 22, 1888, March 2, 1889, June 13, 1890, February 24, 1891, July 16, 1892, and February 27, 1893, and at \$100,000 by the acts of August 6, 1894, February 12, 1895, and March 16, 1896.

## THE RATION.

**580.** Each ration shall consist of one pound and a quarter of beef or three-quarters of a pound of pork, eighteen ounces of bread or flour, and at the rate of ten pounds of coffee, fifteen pounds of sugar, two quarts of salt, four quarts of vinegar, four ounces of pepper, four pounds of soap, and one pound and a half of candles to every hundred rations. The President may make such alterations in the component parts of the ration as a due regard to the health and comfort of the Army and economy may require.<sup>1</sup>

The ration.  
Mar. 16, 1802, c.  
9, s. 6, v. 2, p. 134;  
July 5, 1838, c. 162,  
s. 17, v. 5, p. 258;  
June 21, 1860, c.  
163, s. 4, v. 12, p.  
68; Mar. 3, 1863,  
c. 78, s. 11, v. 12, p.  
744.  
Sec. 1146, R. S.

<sup>1</sup> THE RATION.

A ration is the allowance for subsistence of one person for one day, and consists of the meat, the bread, the vegetable, the coffee and sugar, the seasoning, and the soap and candle components. (Par. 1251, A. R., 1895.) See also Par. 1258. *ibid.*

The kinds and quantities of articles composing the ration for troops where cooking is practicable, and the quantities computed for 100 rations, are as follows (Par. 1253, *ibid.*):

Articles.	Quantities per ration.		Quantities per 100 rations.		
	Ozs.	Gills.	Lbs.	Ozs.	Galls.
<b>MEAT COMPONENTS.</b>					
Fresh beef .....	20	-----	125	-----	-----
or fresh mutton, when the cost does not exceed that of beef .....	20	-----	125	-----	-----
or pork .....	12	-----	75	-----	-----
or bacon .....	12	-----	75	-----	-----
or salt beef .....	22	-----	137	8	-----
or, when meat can not be furnished, dried fish .....	14	-----	87	8	-----
or pickled fish .....	18	-----	112	8	-----
or fresh fish .....	18	-----	112	8	-----
<b>BREAD COMPONENTS.</b>					
Flour .....	18	-----	112	8	-----
or soft bread .....	18	-----	112	8	-----
or hard bread .....	16	-----	100	-----	-----
or corn meal .....	20	-----	125	-----	-----
Baking powder for troops in the field, when necessary to enable them to bake their own bread .....	$1\frac{6}{16}$	-----	4	-----	-----
<b>VEGETABLE COMPONENTS.</b>					
Beans .....	$2\frac{2}{8}$	-----	15	-----	-----
or pease .....	$2\frac{2}{8}$	-----	15	-----	-----
or rice .....	$1\frac{1}{8}$	-----	10	-----	-----
or hominy .....	$1\frac{3}{8}$	-----	10	-----	-----
Potatoes .....	16	-----	100	-----	-----
or potatoes, $12\frac{1}{2}$ ounces, and onions, $3\frac{1}{2}$ ounces .....	16	-----	100	-----	-----
or potatoes, $11\frac{1}{2}$ ounces, and canned tomatoes, $4\frac{1}{2}$ ounces; or $4\frac{1}{2}$ ounces of other fresh vegetables not canned, when they can be obtained in the vicinity of the post or transported in a wholesome condition from a distance .....	16	-----	100	-----	-----
<b>COFFEE AND SUGAR COMPONENTS.</b>					
Coffee, green .....	$1\frac{3}{8}$	-----	10	-----	-----
or roasted coffee .....	$1\frac{7}{8}$	-----	8	-----	-----
or tea, green or black .....	$2\frac{3}{8}$	-----	2	-----	-----
Sugar .....	$2\frac{3}{8}$	-----	15	-----	-----
or molasses .....	-----	$1\frac{1}{8}$	-----	-----	2
or cane sirup .....	-----	$1\frac{1}{8}$	-----	-----	2
<b>SEASONING COMPONENTS.</b>					
Vinegar .....	-----	$2\frac{5}{8}$	-----	-----	1
Salt .....	$1\frac{1}{8}$	-----	4	-----	-----
Pepper, black .....	$2\frac{1}{8}$	-----	-----	4	-----
<b>SOAP AND CANDLE COMPONENTS.</b>					
Soap .....	$1\frac{6}{8}$	-----	4	-----	-----
Candles (when illuminating oil is not furnished by the Quartermaster's Department) .....	$\frac{6}{28}$	-----	1	8	-----

Increase of the ration.

Sec. 5, June 16, 1890, v. 26, p. 158.

Enlisted men to receive one ration daily.

Feb. 8, 1815, v. 3,

p. 204; Mar. 2, 1821, v. 3, p. 615; July 5, 1862, v. 12,

p. 508; July 16, 1892, v. 27, p. 178. Sec. 1293, R. S.

**581.** That the Army ration now provided by law shall be increased by the addition thereto of one pound of vegetables, the proportion to be fixed by the Secretary of War. *Sec. 5, act of June 16, 1890 (26 Stat. L., 158).*

**582.** Enlisted men shall be entitled to receive one ration daily.<sup>1</sup>

#### THE EMERGENCY RATION.

Under the authority vested in him by section 1146, Revised Statutes, the President has established an emergency ration for troops operating for short periods under circumstances which require them to depend upon supplies carried upon their persons. Its component parts are as follows: Bacon, 10 ounces; hard bread, 16 ounces; pea meal, 4 ounces, or an equivalent in approved material for making soup; coffee, roasted and ground, 2 ounces, or tea,  $\frac{1}{2}$  ounce; saccharin, 4 grains; salt, 0.64 ounce; pepper, 0.04 ounce; tobacco,  $\frac{1}{2}$  ounce. (G. O. 49, A. G. O., 1896.)

The emergency ration will be resorted to only on occasions arising in active operations when the use of the regularly established ration may be impracticable; that, although its nutritive qualities permit its use on half allowance, it will not be so used except in cases of overruling necessity, and never for a longer period than ten days; and that not more than five days' emergency rations be carried on the person at one time. (Par. 2, *ibid.*)

#### TRAVEL RATION.

When troops travel otherwise than by marching, or when for short periods they are separated from cooking facilities and do not carry cooked rations, the following articles will be issued in lieu of all components of the ordinary ration. They constitute the travel ration.

Articles.	Per 100 rations.
Soft bread.....pounds..	112 $\frac{1}{2}$
or hard bread.....do.....	100
Beef, canned.....do.....	75
Baked beans, 1-pound cans.....number..	33
or baked beans, 3-pound cans.....do.....	15
Coffee, roasted.....pounds..	8
Sugar.....do.....	15

After troops have been subsisted upon the travel ration for four consecutive days, they may be allowed canned tomatoes in addition to the travel ration at the rate of one pound of tomatoes per man per day. When they arrive at their destination or rejoin their station, subsistence upon the ordinary ration will be resumed immediately, and any unconsumed articles in good condition which they may have on hand will not be sold as savings, but will be turned over to the commissary. (Par. 1256, A. R., 1895.)

#### LIQUID COFFEE.

When enlisted men supplied with cooked or travel rations travel unaccompanied by an officer, funds for the purchase of liquid coffee in lieu of the coffee and sugar portion of the travel ration, at the rate of 21 cents per day for the anticipated number of days' travel, may, on the order of the commanding officer who directs the journey, be paid to each man, and his receipt therefor taken on a receipt roll, which must be accompanied by a copy of the order. When enlisted men supplied with cooked or travel rations travel under command of an officer, funds at the same rate, for the same purpose, will be transferred to him, to be disbursed and accounted for. At the end of the journey the unexpended balance, if any, will be transferred to the nearest commissary. (Par. 1257, A. R., 1895.)

In adjusting charges to be made against enlisted men or others on account of increased expense to the Government for their subsistence, the value of the ordinary ration will be estimated at 18 cents; that of the travel ration at 40 cents.

Enlisted men and hospital matrons are each entitled to one ration per day. When the circumstances of their service make it necessary, civilians employed with the Army may each be allowed one ration per day. (Par. 1252, *ibid.*)

Small quantities of food (articles of the ration) may on the order of the commanding officer, be issued to Indians visiting a military post. The order will state the number of Indians and their tribe, number of days for which the issues are made, quantities, and necessity for the issues. Indians will not be continuously subsisted

<sup>1</sup>Section 1293, Revised Statutes, which authorized the issue of one and a half rations daily to sergeants and corporals of ordnance, was repealed by the act of July 16, 1892 (27 Stat. L., 178). So much of section 1295, Revised Statutes, as authorized the issue of rations to laundresses was repealed by the operation of section 5 of the act of June 17, 1878 (20 Stat. L., 150).

**583.** Hereafter no enlisted man shall be entitled to more than one ration daily. *Act July 16, 1892 (27 Stat. L., 178).* July 16, 1892, v. 27, p. 178.

**584.** Hospital matrons and the nurses employed in post or regimental hospitals, shall be entitled to receive one ration daily. Matrons and nurses. Mar. 16, 1892, c. 9, s. 5, v. 2, p. 134; June 18, 1878, s. 5, v. 20, p. 150. Sec. 1295, R. S.

in this manner except by authority of the Secretary of War. A copy of the order directing the issue will accompany the abstract of issues. (Par. 1266, *ibid.*)

Subsistence will not be issued to destitute persons except when the commanding officer assumes the responsibility of ordering the issue to relieve starvation or extreme suffering. In such cases the circumstances will be fully stated in the order. (Par. 1267, *ibid.*)

At posts and stations where illuminating oil is furnished by the quartermaster, candles are not issued as part of the ration except to individuals whom it is not practicable to supply with oil. (Par. 1255, *ibid.*)

#### OTHER ISSUES OF SUBSISTENCE STORES.

The following issues are made when necessary for the public service:

Articles.	Allowance.	
	Quan- tity in bulk.	Equiv- alent in ra- tions.
<b>1. Candles, when oil for illuminating purposes is not furnished by the Quartermaster's Department:</b>		
To headquarters of a department, per month.....	<i>Lbs.</i> 30	2, 000
To headquarters in the field—		
Of each separate army, when composed of more than one corps, per month.....	40	2, 667
Of an army corps, per month.....	30	2, 000
Of a division, per month.....	20	1, 333
Of a brigade or regiment, per month.....	10	667
Of a battalion serving separately from regimental headquar- ters, per month.....	10	667
To offices and storerooms—		
Of the chief quartermaster or chief commissary of a depart- ment or depot of supply, from April 1 to September 30, per month.....	10	667
Of a quartermaster or commissary of a post, from April 1 to September 30, per month.....	5	333
From October 1 to March 31, not exceeding double the above quantities.		
To guards—		
To the principal guard of each camp, per month.....	12	800
<b>2. Lantern candles:</b>		
To stables—		
Such number of pounds as the commanding officer may order as necessary.		
<b>3. Salt:</b>		
For public animals—	<i>Ozs.</i>	
For each animal, per week.....	2	3
Or, when in the opinion of the commanding officer so much is necessary, not exceeding, per month.....	12	19
<b>4. Vinegar:</b>		
For every 100 public horses or mules, for sanitary purposes—		
Such amount as the commanding officer may order as neces- sary, not exceeding, per week.....	<i>Galls.</i> 2	200
<b>5. Flour:</b>		
For paste used in target practice—		
Such quantity as the commanding officer may order as neces- sary, not to exceed 50 pounds for each troop, battery, or company during the target-practice season.		
<b>6. Matches:</b>		
For lighting fires and lamps for which fuel and illuminating supplies are issued—		
Such quantities as the commanding officer may order as nec- essary.		

For statutory authority for issues of subsistence stores to Indians see paragraph 1441, *post*; see, also, paragraph 1266, A. R., 1895. Rations furnished for the use of the army, being the public property of the United States, can only be disposed of, or issued, in accordance with law. Issues to destitute citizens, not being so authorized, are made on the responsibility of the officer ordering the same. See in this connection paragraph 1267, A. R., 1895.

The issues are made on ration returns signed by the officer in charge and issues ordered by the commanding officer, the latter determining what quantities within

Coffee and sugar may be commuted.

July 5, 1862, c. 133, s. 10, v. 12, p. 510.

**Sec. 1147, R. S.** 585. The Secretary of War may commute the ration of coffee and sugar for the extract of coffee combined with milk and sugar, if he shall believe such commutation to be conducive to the health and comfort of the Army, and not to be more expensive to the Government than the present ration; provided, the same shall be acceptable to the men.

Sugar and coffee ration to be issued weekly.

July 5, 1838, c. 162, s. 17, v. 5, p. 258.

**Sec. 1148, R. S.**

586. The ration of sugar and coffee where issued in kind, shall, when the convenience of the service permits, be issued weekly.

#### PURCHASES AND SALES OF SUBSISTENCE STORES.

Sales to officers and enlisted men. Credit sales.

July 28, 1866, c. 299, s. 25, v. 14, p. 336.

**Sec. 1144, R. S.**

587. The officers of the Subsistence Department shall procure, and keep for sale to officers and enlisted men at cost prices, for cash or on credit, such articles as may, from time to time, be designated by the inspectors-general of the Army. An account of all sales on credit shall be kept, and the amounts due for the same shall be reported monthly to the Paymaster-General.<sup>1</sup>

Sales to be made at cost.

July 5, 1884, v. 23, p. 108.

588. That hereafter all sales of subsistence supplies to officers and enlisted men shall be made at cost price only; and the cost price of each article shall be understood, in all cases of such sales, to be the invoice price of the last lot of that article received by the officer making the sale prior to the first day of the month in which the sale is made.<sup>2</sup> *Act of July 5, 1884 (23 Stat. L., 108).*

Sales of rations.

Mar. 3, 1865, c. 81, s. 5, v. 13, p. 497.

**Sec. 1145, R. S.**

589. Commissioned officers of the Army, serving in the field, may purchase rations for their own use, from any commissary of subsistence, on credit, at cost prices; and the amounts due for such purchases shall be reported monthly to the Paymaster-General.<sup>2</sup>

Sales of tobacco.

Mar. 3, 1865, c. 81, s. 6, v. 13, p. 497.

**Sec. 1149, R. S.**

590. Tobacco shall be furnished to the enlisted men by the commissaries of subsistence, at cost prices, exclusive of the cost of transportation, in such quantities as they may require, not exceeding sixteen ounces per month.<sup>2</sup>

Exceptional supplies.

Feb. 12, 1895, v. 28, p. 658.

591. Hereafter exceptional articles of subsistence stores for officers and enlisted men, which are to be paid for by them, regardless of condition upon arrival at posts, may, under regulations to be prescribed by the Secretary of War, be obtained by open purchase without advertising. *Act of February 12, 1895 (28 Stat. L., 658).*

the limits above prescribed shall be issued. Candles, salt, vinegar, and flour for the above purposes are entered on the ration returns and on the abstract of issues in terms of rations, lantern candles in pounds and matches in boxes. The returns and abstracts show for what places the candles are intended and the number of animals and period for which salt and vinegar are drawn, giving the troop, battery, etc., to which they belong. (Par. 1265, A. R., 1895.)

<sup>1</sup> The funds received from sales made in accordance with sections 3618 and 3692, Revised Statutes, and the act of March 3, 1875 (paragraphs 592, 593, and 594, post), are by those statutes made available for purchases of similar supplies.

<sup>2</sup> The acts of June 23, 1879, and May 4, 1880, contained the requirement that ten per cent of the cost price should be added to the cost of all stores (except tobacco)

## PROCEEDS OF SALES.

592. All proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, except the proceeds of the sale or leasing of marine hospitals, or of the sales of revenue cutters, or of the sales of commissary stores to the officers and enlisted men of the Army, or of materials, stores, or supplies sold to officers and soldiers of the Army, or of the sale of condemned Navy clothing, or of sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall be deposited and covered into the Treasury as miscellaneous receipts, on account of proceeds of Government property, and shall not be withdrawn or applied, except in consequence of an appropriation made by law.

Proceeds of sales available for new purchases.  
Sec. 3618, R. S.

593. All moneys received from the leasing or sale of marine hospitals, or the sale of revenue-cutters, or from the sale of commissary stores to the officers and enlisted men of the Army, [or from the sale of materials, stores, or supplies sold to officers and soldiers of the Army,] or from sales of condemned clothing of the Navy, or from sales of materials, stores, or supplies to any exploring or surveying expedition authorized by law, shall respectively revert to that appropriation out of which they were originally expended, and shall be applied to the purposes for which they are appropriated by law.

Proceeds of certain sales available for purchase of supplies.

Mar. 3, 1847, c. 48, s. 1, v. 9, p. 171; Apr. 20, 1866, c. 63, ss. 1, 2, v. 14, p. 40; July 28, 1866, c. 299, s. 25, v. 14, p. 336; May 8, 1872, c. 140, s. 5, v. 17, p. 83; June 8, 1872, c. 348, v. 17, p. 337; Mar. 3, 1875, c. 130, v. 18, p. 388; Mar. 3, 1875, c. 131, v. 18, p. 410; Feb. 27, 1877, c. 69, v. 19, p. 249. Sec. 3692, R. S.

594. That so much of the appropriation for subsistence of the Army as may be necessary may be applied to the purchase of subsistence-stores for sale to officers for the use of themselves and their families, and to commanders of companies or other organizations, for the use of the enlisted men of their companies or organizations, and the proceeds of all sales of subsistence-supplies shall hereafter be exempt from being covered into the Treasury and shall be immediately available for the purchase of fresh supplies.<sup>1</sup> *Act of March 3, 1875 (18 Stat. L., 410).*

Appropriations for subsistence applicable to purchase of stores for sale to officers, etc.

Mar. 3, 1875, v. 18, p. 410.

sold to officers and enlisted men, to cover wastage, transportation, and other incidental charges. (21 Stat. L., 32, 111.) This provision was repealed by the act of July 5, 1884, above cited. To a civilian employed with the Army at a remote place, where food can not otherwise be procured, stores will be sold for cash, in limited quantities, for his own use, at invoice or contract prices with 10 per cent added. (Par. 1284, A. R., 1895.) The amounts due for such sales to be deducted from the next payment to the officer or enlisted man. See paragraphs 659, 660, and 661, *post*.

<sup>1</sup> Under the act of March 3, 1875 (18 Stat. L., 410), the proceeds of all sales of subsistence supplies are exempt from being covered into the Treasury, and are immediately available for the purchase of fresh supplies. (3 Dig. Comp. Dec., 324.)

Under the act of March 3, 1875 (18 Stat. L., 410), the proceeds of all sales of subsistence supplies, being exempt from being covered into the Treasury, revert to the appropriation "Subsistence of the Army," out of which they were originally expended, and are applicable to the purpose for which they are appropriated by law, namely, the purchase of fresh supplies only during the fiscal year for which the

Sugar and coffee.

July 5, 1838, c. 162, s. 17, v. 5, p. 258.

Sec. 1294, R. S.

**595.** For each ration of sugar and coffee not issued, nor commuted for the extract of coffee combined with milk and sugar, enlisted men shall be paid in money.<sup>1</sup>

appropriation to which they revert is available, for which purpose they are immediately available without the intervention of a repay warrant. (Ibid.)

The subsistence supplies contemplated by the provision of the act of March 3, 1875 (18 Stat. L., 410), declaring the proceeds of all sales of such supplies immediately available for the purchase of fresh supplies, comprise not only the supplies denominated "subsistence stores," but also the necessary means for handling, preserving, issuing, selling, and accounting for these supplies, as tools, scales, measures, utensils, stationery, safes, office furniture, etc. (Ibid., 344.)

#### <sup>1</sup> SAVINGS.

Articles of the ration (excluding fresh vegetables, bread, and baking powder) due a bakery, a company, or any organization, not needed for consumption, will be retained by the commissary if required for reissue, and will be purchased as savings at the invoice prices. Savings and sales of fresh beef (except of that issued for the sick in hospital, the detachment of the hospital corps, and the hospital matron serving therein) are prohibited; baking powder issued but not used will be returned to the commissary. The commissary will purchase the savings of hospitals (including fresh beef) at cost prices when the surgeon in charge so desires, but will not purchase savings of companies, bakeries, or any organization when public loss would result. When not required for reissue, savings may be sold to any person. (Par. 1269, A. R., 1895.)

Savings purchased by the commissary will be entered on a receipt roll, in duplicate, in the name of the organization to which they belong, and the money value receipted for by the officer in charge thereof. Payments for hospital savings will be made to the surgeon of the post or station. (Par. 1270, *ibid.*)

If savings are not paid for by the commissary in the month in which accumulated, the proper organization will be furnished with an extract, in duplicate, of the receipt roll, showing stores received from it and the amount due, which, duly certified by the commissary and approved by the commanding officer, will be presented for payment to any commissary having funds for the purpose. (Par. 1271, *ibid.*)

When troops at a post raise their own vegetables, or when they are not supplied with fresh vegetables in kind by the commissary, commutation will be allowed at the prices of potatoes and onions in the vicinity of the post or in the market from which the post is supplied, in the proportion of 80 per cent of potatoes and 20 per cent of onions, the commutation prices being determined monthly by the Subsistence Department. (Par. 1254, *ibid.*)

#### COMMUTATION.

The principle which governs commutation of rations in lieu of subsistence is that commutation will not be allowed where subsistence in kind is provided by Government. (*Jaegle v. U. S.*, 28 C. Cls. R., 133.)

Authority to establish the rates of the allowance for commutation of rations has not been given by statute, but the rates have been left to be fixed by Army Regulations. But these amounts are recognized and sanctioned in the provisions of the Army appropriation acts relating to the Subsistence Department. (Dig. J. A. Gen., p. 579, par. 71.)

Paragraph 1273, Army Regulations, 1895, in directing that commutation in lieu of rations shall not be allowed to soldiers where subsistence in kind is provided by the Government, excepts cases where the same is specially authorized by the Secretary of War. *Held*, that this part of the Regulations was substantially superseded by the statutory provision of the existing Army appropriation act of February 27, 1893, which enumerates several specific classes of enlisted men as persons to whom the payment may be made without reserving to the Secretary of War any authority to extend the privilege. (Par. 72, *ibid.*)

The allowance for commutation of rations, made payable, by the Army appropriation act of February 27, 1893, "to enlisted men traveling on detached duty, when it is impracticable to carry rations," etc., *held* to be restricted to the period covered by the travel, and not to be payable to a soldier for commutation of rations consumed at the destination where he was placed by his orders on detached duty, viz, for four days' board at a hotel at the terminus of his travel. (Par. 73, *ibid.*)

A claim for commutation of rations on furlough can not be allowed without the production of the furlough issued, or other satisfactory evidence that payment has not been made. The burden of proof rests upon the claimant to establish the validity of his claim by something more than his unsupported statements. (1 Compt. Dec., 513.)

Commutation of rations may be allowed at the following rates, under the conditions mentioned, viz:

Conditions.	Rate per day each.
1. To a soldier at the conclusion of his furlough, provided that on or before the last day thereof he has reported at his proper station or has been discharged .....	\$0. 25
2. To sergeants of the post noncommissioned staff (and soldiers acting as such) on duty at forts and stations where there are no other troops ....	. 40
3. To a soldier on detached duty, stationed in a city or town where subsistence is not furnished by the Government .....	. 75

596. The line officers of the Army shall superintend the cooking done for the enlisted men.<sup>1</sup>

Superintend-  
ence of cooking.  
Mar. 3, 1863, c.  
78, s. 8, v. 12, p. 744.  
Sec. 1234, U.S.

Conditions.	Rate per day each.
4. To a soldier traveling under orders from a place or station at which his rations have been regularly commuted.....	\$1.50
5. To enlisted men traveling under orders (when the journey can not be performed in twenty-four hours and it is impracticable to carry rations of any kind), as follows:	
To an enlisted man traveling alone.....	1.50
To two enlisted men traveling as a detachment or traveling as a guard to an insane patient or military prisoner, each.....	1.50
To an insane patient or military prisoner traveling under guard of one or two enlisted men, to be paid, on the order of the commanding officer, in advance to and to be receipted for by the person to whose charge the patient or military prisoner is committed by the order.....	1.50

(Par. 1272, A. R., 1895.)

Commutation of rations will not be allowed to enlisted men serving where subsistence is furnished by the Government; or traveling under orders when they can carry and cook their rations, or can carry cooked or travel rations; or traveling under orders by steamboat or steamship where the passage rates include meals; or failing to report at their proper stations on or before the last day of furlough unless discharged; or recruiting parties at their stations; nor to civil employees. (Par. 1273, *ibid.*)

<sup>1</sup>Section 1233, Revised Statutes, which required cooks to be detailed, in turn, from the privates of each company was repealed by the act of June 29, 1879 (20 Stat. L., ch. 24, p. 276).



# CHAPTER XIX.

## THE PAY DEPARTMENT.

Par.	Par.
597. The Pay Department; organization.	603. Duties of paymasters.
598. Right of command.	604. Paymasters' clerks.
599. Additional paymasters.	605. Renewing bonds of paymasters.
600. Service to be temporary.	606. Payments to troops.
601. Duties of Paymaster-General.	607. Payment of enlisted men by check.
602. Duties of deputy paymasters-general.	

Pay Department; organization.

July 28, 1866, c. 299, s. 18, v. 14, p. 335; June 4, 1872, c. 286, v. 17, p. 219; Mar. 2, 1875, c. 118, v. 18, p. 338; Mar. 3, 1875, J. R. No. 7, v. 18, p. 524; July 22, 1876, c. 222, v. 19, p. 95; Mar. 3, 1883, v. 22, p. 457; July 5, 1884, v. 23, p. 108; July 16, 1892, v. 27, p. 175; Feb. 12, 1895, v. 28, p. 655. Sec. 1182, R. S.

Right of command.

Mar. 3, 1847, c. 61, s. 13, v. 9, p. 185.

Sec. 1183, R. S. Additional paymasters.

July 5, 1838, c. 162, s. 25, v. 5, p. 259.

Sec. 1184, R. S.

**597.** The Pay Department of the Army shall consist of one Paymaster-General, with the rank of brigadier-general; two assistant paymasters-general, with the rank of colonel of cavalry; three deputy paymasters-general, with the rank of lieutenant-colonel of cavalry; and twenty paymasters, with the rank of major of cavalry.<sup>1</sup>

**598.** Officers of the Pay Department shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.

**599.** When volunteers or militia are called into the service of the United States, and the officers of the Paymaster's Department are not deemed by the President sufficient for the punctual payment of the troops, he may appoint, by and with the advice and consent of the Senate, and add to said corps as many paymasters, to be called additional paymasters, with the rank of major, not exceeding one for every two regiments of volunteers or militia, as he may deem necessary.

<sup>1</sup> The act of July 22, 1876 (19 Stat. L., 95), fixed the rank of Paymaster-General at that of brigadier-general. The act of March 3, 1883 (22 Stat. L., 457), provided that vacancies in the grade of lieutenant-colonel and major in the Department should not be filled, by original appointments, until the Pay Corps should have been reduced to forty paymasters. The act of July 5, 1884 (23 Stat. L., 108), authorized the retirement of paymasters (majors) on their own application after twenty years' service, and fixed the organization of the Pay Department as follows: One Paymaster-General (brigadier-general), two assistant paymasters-general (colonels), three assistant paymasters-general (lieutenant-colonels), and twenty-nine paymasters (majors), and provided that no new appointments should be made until the number of majors should have been reduced to twenty-nine, and thereafter the number of officers in the Pay Department should not exceed thirty-five. The act of July 16, 1892 (27 Stat. L., 175), fixed the number of majors in the Department at twenty-five. The act of February 12, 1895 (28 Stat. L., 655), fixes the number of majors and paymasters at twenty and provides that there shall be no appointments to the grade of major until the number of paymasters shall have been reduced to twenty. For general provisions respecting promotions in this department, see the chapter entitled THE STAFF DEPARTMENTS.

**600.** Additional paymasters shall be retained in service only so long as they may be required for the payment of volunteers and militia, as provided herein. Service to be temporary.  
July 5, 1838, c. 162, s. 25, v. 5, p. 259. Sec. 1185, R. S.

**601.** The Paymaster-General shall perform the duties of his office under the direction of the President. Duties of Paymaster-General.  
Mar. 16, 1802, c. 9, s. 16, v. 2, p. 135. Sec. 1186, R. S.

**602.** The deputy paymasters-general shall, in addition to paying troops, superintend the payment of armies in the field. Duties of deputy paymasters-general.  
Mar. 3, 1847, c. 61, ss. 12, 22, v. 9, p. 185; July 19, 1848, c. 104, s. 3, v. 9, p. 247; Mar. 2, 1849, c. 80, v. 9, p. 350; July 28, 1866, c. 299, s. 18, v. 14, p. 335. Sec. 1187, R. S.

**603.** The paymasters and additional paymasters shall pay the regular troops, and shall pay all other troops in the service of the United States, when required to do so by order of the President.<sup>1</sup> Duties of paymasters.  
Apr. 24, 1816, c. 69, s. 4, v. 3, p. 298; July 14, 1832, c. 224, s. 4, v. 4, p. 259. Sec. 1188, R. S.

**604.** Paymasters and additional paymasters shall be allowed a capable non-commissioned officer or private as clerk. When suitable non-commissioned officers or privates can not be procured from the line of the Army, they are authorized, by and with the approbation of the Secretary of War, to employ citizens as clerks, at a salary of fourteen hundred dollars a year.<sup>2</sup> *Act of June 30, 1882 (22 Stat. L., 118).* Paymasters' clerks.  
Apr. 24, 1816, c. 69, s. 3, v. 3, p. 297; July 5, 1838, c. 162, s. 20, v. 5, p. 259; June 20, 1864, c. 145, s. 10, v. 13, p. 145. June 30, 1882, v. 22, p. 118. Sec. 1190, R. S.

**605.** All disbursing officers of the Pay Department shall renew their bonds, or furnish additional security, at least once in four years, and as much oftener as the President may direct.<sup>3</sup> Renewing bonds of paymasters.  
Mar. 2, 1849, c. 80, v. 9, p. 350. Sec. 1192, R. S.

#### PAYMENTS TO TROOPS.

**606.** The Army shall be paid in such manner that the arrears shall at no time exceed two months, unless circumstances shall render further arrears unavoidable.<sup>4</sup> Payments to troops.  
Mar. 16, 1802, c. 9, s. 13, v. 2, p. 135. Sec. 1189, R. S.

**607.** That the Secretary of War is also authorized to arrange for the payment of the enlisted men serving at posts or places where no paymaster is on duty, by check or by currency, to be sent to them by mail or express, at the expense and risk of the United States.<sup>4</sup> *Act of February 27, 1893 (27 Stat. L., 175).* Payment of enlisted men by check, etc.  
Feb. 27, 1893, v. 27, p. 175.

<sup>1</sup>Paymasters of the Army are the financial agents of the Government, and their disbursements, represented by vouchers, are examined and scrutinized by the Comptroller, whose duty it is finally to determine whether or not any particular disbursement shall be credited to the officer. In charging an officer, or refusing him credit for erroneous disbursements, the question of proper care invariably enters into consideration in arriving at a decision. The right to determine that question is a most essential feature of the functions of the Comptroller. (3 Dig. Compt. Dec., 11.)

<sup>2</sup>For statutory provisions as to the travel allowances of paymasters' clerks, see "Mileage," paragraph 634, *post*. The act of February 27, 1893 (27 Stat. L., 176), provides that "the number of paymasters' clerks shall be reduced one for every paymaster reduced under the operation of this act."

<sup>3</sup>For general provisions respecting bonds of disbursing officers, see the chapters entitled THE TREASURY DEPARTMENT AND THE STAFF DEPARTMENTS.

<sup>4</sup>PAYMENT OF ENLISTED MEN.

Troops will be paid every month unless circumstances prevent, in which case the

## PAY AND ALLOWANCES.

Par.

608. Rates of pay to officers.

609. Pay of principal assistant in  
Ordnance Bureau.

Par.

610. Mounted pay.

611. To be paid monthly.

612. Brevets.

paymaster charged with the payment will immediately report the facts through his chief paymaster to the Paymaster-General. (Par. 1348, A. R., 1895.)

Payments will be made as soon after the close of each month as practicable:

(1) By paymasters in person; or

(2) By check or currency shipped by express.

The troops at posts where paymasters are stationed and others in their immediate vicinity, to be designated in instructions issued from the Adjutant-General's Office, will be paid by paymasters in person.

For posts at which payments are not required to be made in person, the paymaster will transmit the pay due in one or more of the following ways:

(1) By individual check, payable to the order of each man for the exact amount due.

(2) By inclosing in a separate sealed envelope the exact amount in currency due each soldier, with his name and the amount inclosed marked thereon. (Par. 1349, *ibid.*)

Duplicate muster and pay rolls will be duly signed by the men, and forwarded by the commanding officer by mail to the paymaster who has been designated by the department commander to pay the command. (Par. 1350, *ibid.*)

When forwarding the rolls the post commander will furnish the paymaster with the name, rank, etc., of the officer designated to see that the men of the command are paid, and at the same time will state what part of the pay can conveniently be received by the men in individual checks and cashed at or near the post without discount, designating the location of depository on which it is desired that the checks should be drawn. The remainder of the pay will be sent in envelopes. (Par. 1351, *ibid.*)

The paymaster will, as far as practicable, draw the checks on the depository designated, the checks and money for each organization will be inclosed in separate packages properly marked, and the whole will be consolidated into one package and forwarded by express to the post commander. One of each of the company or detachment rolls extended to show the amounts to be paid will be returned to the commanding officer and by him sent to the proper company commanders. (Par. 1352, *ibid.*)

At places beyond express delivery, the post commander, when notified by the paymaster that funds are to be expected, will send an officer with a suitable escort to receipt for the express package and convey the funds to the post. The name of the officer authorized to receipt for the package will previously have been reported to the paymaster. (Par. 1353, *ibid.*)

When the package is received at the post, it will be delivered to the officer who has been designated by the commanding officer to distribute the pay. As soon as possible the individual checks or the currency will be handed to the men by the officer designated, and when the payment is in currency from envelopes, a second officer, who may be the company commander, will be required to verify the amounts in the envelopes, so that, in case of error, certificates may be prepared at once by both officers. Should there be a deficiency, it will be so certified on the roll by the paying and the verifying officers, and should there be an excess the surplus will be returned to the paymaster. In each case a statement of the facts, with appropriate certificates, will be sent to the paymaster by the post commander. (Par. 1354, *ibid.*)

Should any error or informality be discovered in a check, it will be returned to the paymaster for correction; and the roll may be held, or returned with a note as to the nonpayment, at the discretion of the post commander. (Par. 1355, *ibid.*)

Should the bank or person who cashes the individual check so desire, the company commander will certify to the correctness of the indorsements made by his men upon their respective checks. (Par. 1356, *ibid.*)

Each company commander will witness the payment of the company and so certify on the roll, which he will then transmit to the paymaster. When the paymaster has received this witnessed roll he will send the duplicate to be witnessed and returned. Should it be impracticable, owing to his absence or incapacity, to secure the signature of the witnessing officer to the second roll, any commissioned officer may make upon it an official copy of the witnessing officer's certificate and signature as evidenced by the retained roll. (Par. 1357, *ibid.*)

Should a soldier die or desert in the interval between signing the roll and the actual payment, the check or the cash received for him will be treated as the effects of a deceased soldier or of a deserter. Should he be temporarily absent or in confinement, it will be retained by the company commander until return or release of the soldier. (Par. 1358, *ibid.*)

Should a soldier decline to receive his pay, or if, for any other reason than those mentioned, it should be impracticable to deliver it to him, the money or check will be returned by express or registered mail to the paymaster, the man's signature on the roll canceled, and a note of explanation verified by the signature of the witnessing officer made upon the roll. (Par. 1359, *ibid.*)

Deposits may be made in the usual manner, the amount to be deposited being reported to the paymaster by letter forwarded with the rolls, the soldier's deposit book being also forwarded therewith. Should a man desire to deposit a sum greater than his pay, his company commander will see that a proper check, postal order, or express order accompanies his deposit book; if neither check nor order can be

Par.	Par.
613. Allowances.	618. To be computed on yearly pay of grade.
614. Service pay.	619. Pay of retired officers.
615. Not to exceed 40 per centum of yearly pay.	620. Pay of officers wholly retired.
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617. Service for longevity pay, how computed.	622. Leaves of absence on full pay.
	623. Forfeiture of pay during absence without leave.

## OFFICERS.

608. The officers of the Army shall be entitled to the pay<sup>1</sup> herein stated after their respective designations:

The General: thirteen thousand five hundred dollars a year.

Lieutenant-General: eleven thousand dollars a year.

Major-general: seven thousand five hundred dollars a year.

Brigadier-general: five thousand five hundred dollars a year.

Colonel: three thousand five hundred dollars a year.

Lieutenant-colonel: three thousand dollars a year.

Major: Two thousand five hundred dollars a year.

Captain, mounted: two thousand dollars a year.

Captain, not mounted: eighteen hundred dollars a year.

Adjutant: eighteen hundred dollars a year.

Regimental quartermaster: eighteen hundred dollars a year.

First lieutenant, mounted: sixteen hundred dollars a year.

First lieutenant, not mounted: fifteen hundred dollars a year.

Second lieutenant, mounted: fifteen hundred dollars a year.

Second lieutenant, not mounted: fourteen hundred dollars a year.

Chaplain: fifteen hundred dollars a year.<sup>2</sup>

obtained, the company commander will send the money by registered mail at public expense, verifying the amount and reporting it in a separate communication to the paymaster. Deposit books will be returned by the paymaster to the company commander properly filled in for attestation. (Par. 1360, *ibid.*)

Troops in the field will be paid by currency in envelopes, unless the department commander directs personal payment by the paymaster. (Par. 1361, *ibid.*)

In time of war, troops in active campaign will be paid by paymasters in person; troops in garrison may be paid by the paymaster or by checks or currency in envelopes; troops in campaign by either of these methods, as the army or department commander may direct. (Par. 1362, *ibid.* See, also, G. O., 31, A. G. O., 1896.)

<sup>1</sup>Pay is the monthly pecuniary compensation of officers and soldiers of the Army, as fixed by sections 1261, 1280, etc., Revised Statutes. It is quite distinct from "allowances." Dig. J. A. G., 560, par. 1; 10 Opin. Att. Gen., 285. The right to pay begins and ends with the period of legal service. Except by special authority of Congress, an officer or soldier can not be paid for military service rendered before appointment, enlistment, or muster in. See note 1 to paragraph 614, *post*. See also the chapter entitled COMMISSIONED OFFICERS.

<sup>2</sup>See, for rank and retired pay of these officers, paragraph 931, *post*.

Rates of pay to officers.

Mar. 2, 1867, c. 145, §. 7, v. 14, p. 423; July 15, 1870, c. 294, §. 24, v. 16, p. 320; July 24, 1876, c. 226, v. 19, p. 97.

Sec. 1261, R. S.

Aid to major-general: two hundred dollars a year, in addition to pay of his rank.

Aid to brigadier-general: one hundred and fifty dollars a year, in addition to pay of his rank.

Acting assistant commissary: one hundred dollars a year, in addition to pay of his rank.

Ordnance store-keeper at Springfield armory:<sup>1</sup> two thousand five hundred dollars a year.

All other store-keepers: two thousand dollars a year.

Pay of principal assistant in Ordnance Bureau.

609. The principal assistant in the Ordnance Bureau shall receive compensation, including pay and emoluments, not exceeding that of a major of ordnance.

Feb. 27, 1877, v. 19, p. 243. Sec. 1279, R. S.

Mounted pay. Feb. 27, 1877, c. 69, v. 19, p. 243. Sec. 1270, R. S.

610. That officers of the Army and of Volunteers assigned to duty which requires them to be mounted shall, during the time they are employed on such duty receive the pay, emoluments, and allowances of cavalry officers of the same grade respectively.<sup>2</sup>

To be paid monthly.

July 15, 1870, c. 294, s. 24, v. 16, p. 320. Sec. 1268, R. S.

611. The sums hereinbefore allowed shall be paid in monthly payments by the paymaster.<sup>3</sup>

Brevets.

Mar. 3, 1863, c. 82, v. 12, p. 758; Mar. 3, 1865, c. 79, s. 9, v. 13, p. 488. Sec. 1261, R. S.

612. Brevets conferred upon commissioned officers shall not entitle them to any increase of pay.

<sup>1</sup>And the ordnance storekeeper on duty as disbursing officer and assistant to the chief of ordnance. See paragraph 856, *note*, and paragraph 863, *post*.

<sup>2</sup>A mounted officer is one who, by statute, regulations, or army organization, is "required" to be mounted at his own expense. *Harold v. U. S.*, 23 C. Cls. R., 295. An officer of a battery designated by the President as a "light battery" is entitled to mounted pay from the date of such designation. *Ibid.* Officers are not assigned to duty "requiring them to be mounted" when no order or authorization requiring them to mount themselves has been issued by the War Department, and they have merely been riding Government horses, by permission, and have been furnished with Government equipments. *Forbes v. U. S.*, 17 C. Cls. R., 32. Nor are officers so assigned within the meaning of the act of February 12, 1877, where they are simply mounted on Government horses captured from Indians, and do not furnish, at their own expense, horses, saddles, bridles, sabers, pistols, spurs, and other cavalry equipments. *Ibid.*; *Carter v. U. S.*, 22 *ibid.*, 73.

The following officers, in addition to those whose pay is fixed by law, are entitled to pay as mounted officers: Officers of the staff corps below the rank of major, officers serving with troops of cavalry, officers of a light battery duly organized and equipped, authorized aids duly appointed, officers serving with companies of mounted infantry, and officers on duty which, in the opinion of the department commander, requires them to be mounted and so certified by the latter on their pay vouchers. Acting judge-advocates of military departments, duly detailed, are entitled, while so serving, to the rank, pay, and allowances of captains of cavalry. (Par. 1301, A. R., 1895.)

Department commanders will announce, in orders, the authority obtained from the Secretary of War for mounting companies of infantry, giving the date from which such mounted service commences, and termination of the same. (Par. 1302, *ibid.*)

Muster rolls and returns of light batteries and companies of mounted infantry will show the number, date, and source of order authorizing mounted service. The pay accounts of officers charging mounted pay will contain the same information. A copy of the order will be attached to the first muster rolls prepared after the battery or company has been equipped or mounted; a copy of the order discontinuing such service will appear on the first muster rolls prepared after its discontinuance. (Par. 1303, *ibid.*)

#### PAYMENTS TO OFFICERS.

<sup>3</sup>Officers will be paid monthly, on duplicate accounts, certified by themselves, according to prescribed forms. (Par. 1298, A. R., 1895.)

Section 1268, Revised Statutes, requires that officers shall be paid monthly, and section 3848, Revised Statutes, in effect, forbids their being paid in advance. Their right, however, to assign their monthly pay, when duly accrued, has long been

**613.** No allowances shall be made to officers in addition to their pay except as hereinafter provided.<sup>1</sup>

Allowances,  
July 15, 1870, c.  
294, s. 24, v. 16, p.  
320.  
Sec. 1269, R. S.

#### LONGEVITY PAY.

**614.** There shall be allowed and paid to each commissioned officer below the rank of brigadier-general, including chaplains and others having assimilated rank or pay, ten per centum of their current yearly pay for each term of five years of service.<sup>2</sup>

Service pay.  
July 15, 1870, c.  
294, s. 24, v. 16, p.  
320.  
Sec. 1262, R. S.

admitted. 15 Opin. Att. Gen., 611. The prohibition in paragraph 1300 of the transfer of pay accounts before they are due implies the right to transfer them when or after due. Dig. J. A. G., 570, par. 28; 15 Opin. Att. Gen., 271. The pay of an officer authorized to receive it can be paid by a paymaster only to the officer himself or his proper assignee. Where two or more persons produce assignments of an officer's pay, or of a portion or portions of the same, the paymaster should refuse to pay at all. The Government can not undertake to decide such controversies. Dig. J. A. G., 570, par. 29.

An officer will not hypothecate nor transfer a pay account not actually due. When due it may be transferred by indorsement, naming the party to whom transferred, and may be paid by the proper paymaster if satisfied of the genuineness of the officer's signature and if no stoppage or other disability as to pay prevents. The date of transfer, certified by the officer whose account it is, will appear in the indorsement. When an officer transfers a pay account, he will, at the time of transfer, communicate the fact to the chief paymaster of the department, through the paymaster who is expected to pay it. If the officer be on leave, or if his accounts be payable in Washington, the notification of transfer will be made to the Paymaster General. (Par. 1300, *ibid.*)

The assignment of their pay accounts by army officers after the same become due is authorized by paragraph 1300 of the Army Regulations of 1895, and is legal. (3 Compt. Dec., 45.)

A person appointed to the Army, or receiving an appointment to a new office therein, is entitled to pay from date of acceptance only. In all cases of promotion an officer is entitled to pay from date of vacancy. (Par. 1306, A. R., 1895.)

In payment to officers and enlisted men, the days of commencement and expiration of service will be included. When service begins on the 31st day of a month, pay will not be allowed for that day. (Par. 1312, *ibid.*)

An acting commissary will be paid the additional pay allowed by law, on the certificate of the Commissary-General that he has performed the duty contemplated therein during the time charged. To entitle him to this pay he must be detailed under proper orders from some established post or body of troops, and must issue full rations to troops from stores for which he is responsible. (Par. 1304, *ibid.*)

No officer shall receive pay for two staff appointments for the same time. This prohibition does not prevent a quartermaster of a regiment who, in addition to the duties of his office, may be acting commissary, from receiving the extra compensation allowed by law for performing the duties of the latter. (Par. 1305, *ibid.*)

An officer leaving the service will, before receiving final payment, produce certificates as to his indebtedness to the United States, and will make oath upon the final voucher to the correctness of the several items contained therein, stating the place of his residence, and that he is not indebted to the United States on any account whatever, except as shown by said certificate. (Par. 1307, *ibid.*)

An officer who tenders his resignation while on duty will receive pay to include the date on which he receives notice of acceptance, if he continue on duty until that time; or if sooner relieved from duty, to include the date of relief. An officer whose resignation takes effect while on leave will be paid to include date of acceptance. (Par. 1308, *ibid.*; *Burger v. U. S.*, 6 C. Cls. R., 35.)

An officer placed upon the retired list will receive active pay to include the date of retirement. If on duty, he will receive such pay to include the date of relief from duty. (Par. 1309, A. R., 1895.)

An officer dismissed by sentence of court-martial will be paid to the date of termination of service, as specified in the order promulgating the sentence. (Par. 1310, *ibid.*)

An officer of the Army appointed to a grade in the volunteers or militia in the service of the United States superior to that held by him in the Army will be entitled to the pay and emoluments of the grade to which appointed, after mustering therein. (Par. 1313, *ibid.*)

<sup>1</sup>Pay is the fixed and direct amount given by law; allowances or emoluments are indirect or contingent remuneration; both are compensation. (*Sherburne v. U. S.*, 16 C. Cls. R., 491.) See also note 1 to paragraph 608, *ante*.

<sup>2</sup>Longevity pay is founded upon the equivalent of increased judgment and capacity acquired by the experience of continued service. *Brown v. U. S.*, 18 C. Cls. R., 545. Acts authorizing longevity pay are remedial statutes, and officers are entitled to a liberal interpretation of them, the language used being given as broad a meaning as Congress may be presumed to have intended. *Hendee v. U. S.*, 22 C. Cls. R., 134; 19 *ibid.*, 153.

An officer once in actual service, under color of office, is entitled to have the time

Not to exceed 40 per centum of yearly pay.  
 July 15, 1870, c. 294, s. 24, v. 16, p. 230.

Sec. 1263, R. S.  
 Maximum of colonel's and lieutenant-colonel's pay.

July 15, 1870, c. 294, s. 24, v. 16, p. 320.

Service for longevity pay, how computed.

Sec. 7, June 18, 1878, v. 20, p. 150.

To be computed on yearly pay of grade.  
 June 30, 1882, v. 22, p. 118.

**615.** The total amount of such increase for length of service shall in no case exceed forty per centum on the yearly pay of the grade as provided by law.

**616.** In no case shall the pay of a colonel exceed four thousand five hundred dollars a year, or the pay of a lieutenant-colonel exceed four thousand dollars a year.

Sec. 1267, R. S.

**617.** That on and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement.<sup>1</sup> *Sec. 7, act of June 18, 1878 (20 Stat. L., 150).*

**618.** That from and after the first day of July, eighteen hundred and eighty-two, the ten per centum of increase for length of service allowed to certain officers by section 1262 of the Revised Statutes [par. 614, ante] shall be computed on the yearly pay of the grade fixed by sections 1261 [par. 608, ante] and 1274 [par. 619, post] of the Revised Statutes. *Act of June 30, 1882 (22 Stat. L., 118).*

#### RETIRED OFFICERS.

Pay of retired officers.

July 15, 1870, c. 294, s. 24, v. 16, p. 320; Mar. 3, 1875, c. 178, v. 18, p. 512; *Roberts's Case*,

**619.** Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they are retired.<sup>2</sup>

10 C. Cls. R., 283. Sec. 1274, R. S.

credited to him in the computation of longevity pay. *Gould v. U. S.*, 19 C. Cls. R., 593. The time of actual service is to be credited to an officer in the computation of his longevity pay, without regard to a defect in his title to the office. *Palen v. U. S.*, 19 *ibid.*, 389. Service as chaplain prior to the act of March 2, 1867 (14 Stat. L., 423), can be reckoned in computing longevity pay, chaplains being in the military service prior to that date. *U. S. v. LaTourette*, 151 U. S., 572. Service as a contract surgeon can not be reckoned in such computation. *Byrnes v. U. S.*, 26 C. Cls. R., 302; *Hendee v. U. S.*, 124 U. S., 309. Before the passing of the act of July 28, 1866, as well as afterwards, the corps of cadets of the Military Academy was a part of the Army of the United States, and a person serving as a cadet was serving in the Army; and the time during which a person has served as a cadet was, therefore, actual time of service by him in the line of the Army. *Morton v. U. S.*, 112 U. S., 1, 7. In computing longevity pay, service performed as cadets at the Military or Naval Academy, or as enlisted men of the Army or Navy, will be counted. (Par. 1311, A. R., 1895.)

<sup>1</sup> See note 2 on page 219.

<sup>2</sup> Retired officers being in the military service of the Government, the increased pay of 10 per cent for each five years' service applies to the years so passed in the service, after retirement as well as before. *U. S. v. Tyler*, 105 U. S., 244, 246, and 16 C. Cls. R., 223.

An officer placed upon the retired list will receive active pay to include the date of retirement. If on duty, he will receive such pay to include the date of relief from duty. (Par. 1309, A. R., 1895.)

For provisions respecting the retirement of officers and their status, see the title "Retirement of Officers" in the chapter entitled COMMISSIONED OFFICERS. See also *Roberts v. U. S.*, 10 C. Cls. R., 283, *Tyler v. U. S.*, 16 *ibid.*, 223; 17 *ibid.*, 437; and 105 U. S., 244, *U. S. v. Watson*, 130 U. S., 80.

## OFFICERS WHOLLY RETIRED.

**620.** Officers wholly retired from the service shall be entitled to receive, upon their retirement, one year's pay and allowances of the highest rank held by them, whether by staff or regimental commission, at the time of their retirement.

Pay of officers wholly retired.  
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.  
Sec. 1275, R. S.

## PAY DURING ABSENCE.

**621.** Officers when absent on account of sickness or wounds, or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half-pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.<sup>1</sup>

Pay during absence.  
Aug. 3, 1861, c. 42, s. 20, v. 12, p. 290; Mar. 3, 1863, c. 75, s. 31, v. 12, p. 736; June 20, 1864, c. 145, s. 11, v. 13, p. 145; July 15, 1870, c. 294, s. 24, v. 16, p. 320; May 8, 1874, c. 154, v. 18, p. 43; July 29, 1876, c. 239, v. 19, p. 102.  
Sec. 1265, R. S.

U. S. v. Williamson, 23 Wall., 411.

**622.** All officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowance: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken only once in four years.<sup>2</sup> *Act of July 29, 1876 (19 Stat. L., 102).*

Leaves of absence on full pay.  
July 29, 1876, v. 19, p. 102.

<sup>1</sup>Section 1265 of the Revised Statutes was replaced by the act of May 8, 1874 (18 Stat. L., 43), which provided that "all officers on duty west of a line drawn north and south through Omaha City and north of a line drawn east and west upon the southern boundary of Arizona shall be allowed sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the leave is taken but once in two years: *And provided further*, That the leave may be extended to three months if taken only once in three years, or four months if taken only once in four years." This statute was superseded by the act of July 29, 1876, above cited. See paragraph 622, *post*. For statutory provisions respecting leaves of absence to graduates of the Military Academy, see paragraph 622, *post* (note), and the chapter entitled THE MILITARY ACADEMY.

<sup>2</sup> LEAVES OF ABSENCE TO OFFICERS.

In time of peace the commander of a post may grant leaves of absence not to exceed seven days at one time, or in the same month; and he may give permission to apply to the proper authority for extension of such leaves for a period not to exceed twenty-three days. (Par. 44, A. R., 1895.)

The commander of a post may take leave of absence not to exceed seven days at one time, or in the same month, reporting the fact to his next superior commander. (Par. 45, *ibid*.)

A department commander may grant leaves for one month and the Commanding General of the Army for two months; or they may extend to such periods those granted by subordinate commanders. Applications for leaves of more than two months' duration, or from officers of the staff corps and departments for more than one month, or from department commanders desiring leaves of absence to pass beyond the territorial limits of their commands, will be forwarded to the Adjutant-General of the Army for the action of the Secretary of War. (Par. 46, *ibid*.)

Chiefs of bureaus may grant leaves for one month to officers of their respective corps serving under their immediate direction, or extend to that period those already granted to such officers. (Par. 48, *ibid*.)

Leaves of absence for three months, from date of graduation, will be allowed to graduates of the Military Academy. They will not be counted against them in



## ABSENCE WITHOUT LEAVE.

Forfeiture of  
pay during ab-  
sence without  
leave.

July 15, 1870, c.  
294, s. 17, v. 16, p.  
319.

**623.** Every officer who is dropped by the President from the rolls of the Army, for absence from duty three months without leave, shall forfeit all pay due or to become due.<sup>1</sup>

**Sec. 1266, R. S.** subsequent applications for leaves, but can not be postponed to another time. (Par. 49, *ibid.*)

Leaves of absence will be granted in terms of months and days; as "one month," "one month and ten days." Leave for one month, beginning on the first day of a calendar month, will expire with the last day of the month, whatever its number of days. Commencing on an intermediate day, the day will expire the day preceding the same day of the next month. The day of departure, whatever the hour, is counted as a day of duty; the day of return, as a day of absence. (Par. 53, *ibid.*)

A leave of absence commences on the day following that on which the officer departs from his proper station. The expiration of his leave must find him at his post, except as indicated in paragraph 1331. A leave of absence granted an officer in the field, or on special duty, will take effect on the termination of the campaign, or on the completion of such duty, unless in the opinion of the department commander his services can sooner be spared, in which case it will take effect at such time as the department commander may direct. In all other cases an officer is expected to avail himself of a leave as soon as proper facilities offer, unless a specific date is stated in the order, and if unable to do so, he will report the fact to the authority granting the leave. (Par. 54, *ibid.*)

## PAY DURING ABSENCE IN CONFINEMENT.

Officers and enlisted men in arrest and confinement by the civil authorities will receive no pay for the time of such absence; if released without trial, or after trial and acquittal, their right to pay for the time of such absence is restored. (Par. 1314, A. R., 1895.)

## SICK LEAVES.

Application for leave of absence on account of sickness will be made to the commanding officer, who will refer it to the surgeon. The surgeon will examine the applicant and should he find the leave necessary to restore health, he will submit to the commanding officer a medical certificate in the prescribed form, stating explicitly the nature, seat, and degree of the disease, wound, or disability; the cause thereof if known, and the period during which the officer has suffered from it. He will also give his opinion as to whether the disease, wound, or disability can be satisfactorily treated within the department in which the officer is stationed, or whether a change of climate or locality within the United States is necessary to afford more rapid or perfect recovery, in which case the special place or region recommended will be designated, with reasons therefor. The surgeon will also state whether, in his opinion, the disease, wound, or disability requires treatment by a specialist, and, if so, the nearest place where it can be obtained; also whether the wound or disease incapacitates the officer from all duty, or whether he can perform special duty; and, if so, the kind that he may undertake without endangering his ultimate cure. (Par. 60, A. R., 1895.)

The Commanding General of the Army and department commanders have the same authority to grant leaves of absence on account of sickness as to grant ordinary leaves. Permission to go beyond the limits of the command in which the applicant is stationed will be given only when the certificate of the medical officer shall state explicitly that it is necessary to afford rapid or perfect recovery. (Par. 61, *ibid.*)

On the expiration of a sick leave, if the officer be able to travel, he will proceed to his post or station. If an extension of such leave be necessary, he will make timely application therefor through the same channel as in case of request for extension of ordinary leave, basing his application upon a medical certificate in prescribed form. When he can not procure the certificate of a medical officer he will substitute his own certificate, on honor, as to his condition, which will embrace a full statement of his case. While absent from duty he will make report in the same manner as if on ordinary leave. (Par. 62, *ibid.*)

An ordinary leave will not be changed to a sick leave, unless the officer desiring it make application therefor through his post commander, by whom it will be referred to the surgeon, who will certify as to the necessity of the change, or otherwise, as the case may be. The post commander will forward the application through intermediate commanders, who will indorse their remarks thereon for the action of the Commanding General of the Army or the Secretary of War. In all reports concerning absence on account of sickness the officer will state how long he has been absent sick, and by what authority. (Par. 64, *ibid.*)

Section 31 of the act of March 3, 1863 (12 Stat. L., 736), does not apply to an officer

<sup>1</sup>The pay of an officer absent without leave is not absolutely forfeited, but only when it has been made to appear that the absence was not unavoidable. *Smith v. U. S.*, 23 C. Cls. R., 452.

A statement by the Adjutant-General that an officer was "absent without leave" is conclusive as to his status, and is not affected by statements made by officers of the War Department implying the belief that the officer was not responsible for his absence. 3 Compt. Dec., 9.

The act of March 3, 1863 (sec. 1265, Rev. Stat.), provides that an officer absent without leave shall forfeit all pay, etc. If payment has been made, it may be recovered. Lapse of time does not preclude the Government from charging an officer with a payment made to him contrary to law. *Crowell v. U. S.*, 22 C. Cls. R., 69.

## COMMUTATION OF QUARTERS.

Par.

625. Commutation of quarters.

626. Rates of commutation.

627. Rate of commutation for Lieutenant-General.

628. Right to commutation not forfeited by temporary absence on duty.

Par.

629. Military attachés entitled to mileage and commutation of quarters.

625. That at all posts and stations where there are public quarters belonging to the United States, officers may be furnished with quarters in kind in such public quarters, and not elsewhere, by the Quartermaster's Department, assigning to the officers of each grade, respectively, such number of rooms as is now allowed to such grade by the rules and regulations of the Army: *Provided*, That at places where there are no public quarters, commutation<sup>1</sup> therefor may be paid by the Pay Department to the officer

Commutation of quarters.  
June 17, 1878, s. 9, v. 20, p. 151.

ordered to proceed to his home and there await orders, though the order was issued at his own request. An officer "absent with leave" is at liberty to go where he will; an officer ordered to a particular place, there to await orders, must remain in that place and continue as much under orders as though assigned to any ordinary military duty. *Williamson v. U. S.*, 10 C. Cls. R., 50, and 23 Wall., 411; *Phisterer v. U. S.*, 11 C. Cls. R., 98, and 94 U. S., 219.

An officer ordered home to await orders may change his place of residence, reporting the fact to the War Department. *Phisterer v. U. S.*, 12 C. Cls. R., 98. An officer ordered home to await orders can not make his home ambulatory by simply reporting from the places where he may chance to be. *Chilson v. U. S.*, 11 C. Cls. R., 691.

<sup>1</sup>Commutation in the military or naval service is money paid in substitution of something to which an officer, sailor, or soldier is entitled; being regulated by statutes and regulations, it can not be allowed by inferior authority. *Jaegle v. U. S.*, 28 C. Cls. R., 133. The right of an officer of the Army to commutation of fuel and quarters springs out of the general authority of the War Department, and has been indirectly sanctioned by Congress from the origin of the Government. This usage has been so long practiced in the Army, and so often sustained by Congress in appropriations for the payment of such commutations, that the right of officers under the regulations of the Army can not now be questioned. *Whittlesey v. U. S.*, 5 C. Cls. R., 99. Since the foregoing decision was rendered the allowance of quarters for the lower grades of officers of the Army and the monthly rate of commutation therefor having been fixed by statute, the practice can no longer be said to rest upon usage or upon the authority of regulations. See acts of June 18, 1878, and June 23, 1879. See, also, Dig. Opin. J. A. G., 573, par. 49.

Officers on the active list detailed as professors of colleges and engineer officers engaged upon civil works are entitled to commutation of quarters and to purchase fuel under the provisions of section 9 of the act of June 17, 1878. Such commutation in the case of an engineer officer would not be payable from the appropriation for the civil work upon which he is engaged. Dig. Opin. J. A. G., 568, pars. 22, 23. See also *Long v. U. S.*, 8 C. Cls. R., 398. An officer ordered home to await orders is not entitled to commutation of quarters, such home not being a military station. *Phisterer v. U. S.*, 13 C. Cls. R., 110. When a military officer is ordered to the headquarters of a military department to await further orders and pursuant to the order remains there, performing no duty, he is entitled to commutation of quarters. If such headquarters are in a large city where there are quarters assignable to officers on duty it is not necessary for him to demand that quarters be assigned him. *Lippitt v. U. S.*, 14 C. Cls. R., 148, and 100 U. S., 663.

Held that the term of description in section 9 of the act of June 18, 1878, "at places where there are no public quarters" includes places where the public quarters were insufficient for all the officers of the command; and that officers stationed at such places, to whom, on account of the insufficiency of the existing accommodations, no quarters could be furnished would be entitled to the commutation allowance. Dig. Opin. J. A. G., 569, par. 26.

An officer who has quarters in kind at one station does not by a change of station acquire a right to other quarters or commutation therefor until he vacates quarters at the former station, and amounts received for such commutation are a proper charge against him. 3 Dig. Compt. Dec., 295.

Temporary absence from his station on duty which requires an officer of the Army to travel during a considerable portion of the time does not amount to a change of station, and the officer does not lose his rights or acquire other rights respecting

entitled to the same at a rate not exceeding ten [twelve]<sup>1</sup> dollars per room per month, and the commutation for quarters allowed to the General shall be at the rate of one hundred and twenty-five dollars per month, and to the Lieutenant-General at the rate of seventy [one hundred]<sup>2</sup> dollars per month. (*Sec. 9, act of June 17, 1878 (20 Stat. L., 151).*)

Rates of com-  
mutation.  
June 23, 1879,  
v. 21, p. 31.

**626.** For commutation of officers' quarters at places where there are no public quarters, one hundred and fifty-six thousand dollars: *Provided*, That no allowance shall be made for claims for quarters for servants heretofore or hereafter; and that the rate of commutation shall hereafter be twelve dollars per room per month for officers' quarters, in lieu of ten dollars, as now provided by law. *Act of June 23, 1879 (21 Stat. L., 31).*

Rate of com-  
mutation for  
Lieutenant-Gen-  
eral.  
June 28, 1882,  
v. 22, p. 118.

**627.** That the allowance for commutation of quarters to the Lieutenant-General of the Army shall be one hundred dollars per month; and for officers and enlisted men of the Signal Service serving in the Arctic regions, the same in amount as though they were serving in Washington, District of Columbia. *Act of June 28, 1882 (22 Stat. L., 118).*

quarters by such absence. If there are available quarters at his station he is not entitled to commutation. *Ibid.* 295.

Officers temporarily on duty in the field shall not lose their right to quarters or commutation thereof at their permanent stations while so temporarily absent. (*Act of July 16, 1892, 27 Stats., 176.*)

For allowance for rooms in kind, see note 1 to paragraph 571 *ante*.

#### COMMUTATION OF QUARTERS.

An officer on duty without troops at a station where there are no public quarters, or where the public quarters are inadequate, is entitled to commutation therefor at established rates. (*Par. 1336, A. R., 1895.*)

An officer on duty at a station where he is properly in receipt of commutation of quarters is entitled to the allowance during ordinary leave on full pay, but not during sick leave. If he is relieved from duty at the station and then granted a leave his commutation ceases. (*Par. 1337, ibid.*)

An officer does not lose his right to quarters or commutation at his permanent station by a temporary absence on duty. While he continues to hold that right and exercises it by constructive occupation or use of any kind, he can not legally demand quarters nor commutation at any other station. Exceptions to this rule can be made only by the Secretary of War. (*Par. 1338, ibid.*)

When the command to which an officer belongs changes station during his temporary absence on duty he loses his right to quarters from the time his command leaves its old station and does not acquire a right at the new station until he has reported for duty thereat. He is entitled in the meantime to quarters or commutation therefor at the station where he is temporarily serving. (*Par. 1339, ibid.*)

An officer relieved from duty at one station, where he was entitled to commutation of quarters, and assigned to another, is not entitled to such allowance from the date of relief to the date on which he reports in person at the new station. (*Par. 1340, ibid.*)

Officers who, for the convenience of the Government, are directed to await orders for a limited period at a point where there are no public quarters, are entitled to commutation; but an officer ordered to his home to await orders is not entitled to this allowance. An officer ordered to report by letter to a superior does not become entitled to commutation of quarters until he receives a specific order of assignment and reports in person at the station to which assigned. (*Par. 1341, ibid.*)

The first voucher for commutation of quarters at any station must be accompanied by a copy of the order assigning the officer to duty thereat. In subsequent vouchers the paymaster will refer by number, etc., to the voucher with which the order is filed, and the final voucher must be accompanied by the authority for, and must show the date of relief from such duty. (*Par. 1342, ibid.*)

<sup>1</sup> The monthly rate of commutation was fixed at \$12 per room by the act of June 23, 1879 (*par. 626, post*).

<sup>2</sup> The monthly rate of commutation in the case of the Lieutenant-General was fixed at \$100 by the acts of February 24, 1881, and June 28, 1882. (*See par. 627, post.*)

**628.** That hereafter officers temporarily absent on duty in the field shall not lose their right to quarters, or commutation thereof, at their permanent station while so temporarily absent. *Act of February 27, 1893 (27 Stat. L., 478).* Right to commutation not forfeited by temporary absence in the field. Feb. 27, 1893, v. 27, p. 478.

**629.** Hereafter the officers detailed to obtain (military information from abroad) shall be entitled to mileage and transportation, and also commutation of quarters while on this duty, as provided when on other duty. *Act of February 27, 1893 (27 Stat. L., 478).* Military attaches entitled to mileage and commutation of quarters. Feb. 27, 1893, v. 27, p. 478.

## TRAVEL ALLOWANCES.

## MILEAGE.

Par.	Par.
630. Mileage; how computed. Necessity for travel to be stated.	634. Travel allowances to paymaster's clerks and to expert accountant.
631. Travel allowances.	635. Travel pay to officers on honorable discharge.
632. Restriction on payment of mileage. Duty to be stated.	
633. Mileage to be paid by Pay Department.	

**630.** From and after the passage of this act mileage of officers of the Army shall be computed over the shortest usually traveled routes between the points named in the order, and the necessity for such travel in the military service shall be certified to by the officer issuing the order and stated in said order. *Act of March 3, 1883 (22 Stat. L., 456).* Mileage; how computed. Necessity for travel to be stated. Mar. 3, 1883, v. 22, p. 456.

**631.** That hereafter the maximum sum to be allowed and paid to any officer of the Army shall be four cents per mile, distance to be computed over the shortest usually traveled routes, and in addition thereto the cost of the transportation actually paid by the officer over said route or routes, exclusive of parlor-car or sleeping-car fare. *And provided further,* That when any officer so traveling shall travel in whole or in part on any railroad on which the troops and supplies of the United States are entitled to be transported free of charge, or over any of the bonded Pacific railroads, he shall be allowed for himself only four cents per mile as a subsistence fund for every mile necessarily traveled over any such railroads: *And provided further,* That the transportation furnished by the Quartermaster's Department to officers traveling without troops shall be limited to transportation in kind not including Travel allowances. Aug. 6, 1894, v. 28, p. 236; Mar. 16, 1896, v. 29, p. 63.

Transportation by Quartermaster's Department.

sleeping or parlor car accommodations, over free roads, over bond-aided Pacific railroads, and by conveyance belonging to said Department, and the Secretary of War shall so apportion this sum as to prevent a deficiency therein. *Act of August 6, 1894 (28 Stat. L., 236).*

Restriction on payment of mileage. Duty to be stated.

Aug. 6, 1894, v. 28, p. 237.

**632.** And hereafter no portion of the appropriation for mileage to officers traveling on duty without troops shall be expended for inspections or investigations, except such as are especially ordered by the Secretary of War, or such as are made by Army and department commanders in visiting their commands, and those made by Inspector-General's Department in pursuance of law, army regulations, or orders issued by the Secretary of War or the Commanding General of the Army; and all orders involving the payment of mileage shall state the special duty enjoined.<sup>1</sup> *Act of August 6, 1894 (28 Stat. L., 237).*

<sup>1</sup> Section 1273, Revised Statutes, fixed the allowance of mileage at 10 cents per mile, to be computed over the nearest post-route and to be paid by the Pay Department. The act of June 16, 1874 (18 Stat. L., 72), discontinued mileage as a method of reimbursement for expenses incurred in traveling on duty and substituted therefor the payment of actual expenses in all cases of travel under orders. This provision was repeated in the act of March 3, 1875 (18 Stat. L., 452). The mileage allowance was restored and fixed at the rate of 8 cents per mile by the act of July 24, 1876 (19 Stat. L., 97), but was not payable when actual transportation had been furnished by the Quartermaster's Department, or in a conveyance owned or chartered by the United States, or on any railroad over which the troops and supplies of the United States were entitled to be transported free of charge; the distance in each case was to be computed by the shortest usually traveled route. Section 1273 was repealed by the act of July 24, 1876, above cited. The act of March 3, 1883 (22 Stat. L., 456), contained the requirement that mileage should be computed over the shortest usually traveled routes between the points named in the order, and that the necessity for travel should be certified to, in each case, in the order directing the journey. The act of June 30, 1886 (24 Stat. L., 95), fixed the rate of mileage at 4 cents per mile, and, in addition thereto, the cost of transportation actually paid, exclusive of sleeping and parlor car fares. The act of February 9, 1887 (24 Stat. L., 396), contains the following provision: "That in disbursing this amount the maximum sum to be allowed and paid to an officer shall be four cents per mile, distance to be computed over the shortest usually traveled routes, and, in addition thereto, upon the officer's certificate that it was not practicable to obtain transportation from the Quartermaster's Department, the cost of the transportation actually paid by the officer over said route or routes, exclusive of sleeping or parlor car fare and transfers: *And provided further,* That when any officer so traveling shall travel in whole or in part on any railroad on which the troops and supplies of the United States are entitled to be transported free of charge, he shall be allowed for himself only four cents per mile as a subsistence fund for every mile necessarily traveled over any such last-named railroad. All the money hereinbefore appropriated except the appropriation for mileage to officers when traveling on duty without troops when authorized by law, shall be disbursed and accounted for by the Pay Department as pay of the Army, and for that purpose shall constitute one fund," which was repeated in the acts of September 22, 1888 (25 Stat. L., 483), March 2, 1889 (25 Stat. L., 827), June 13, 1890 (26 Stat. L., 151), February 24, 1891 (26 Stat. L., 773), July 14, 1892 (27 Stat. L., 177), and February 27, 1893. The act of February 12, 1895 (28 Stat. L., 657), contains the same requirement.

Mileage is a form of reimbursement, and "public business" is the foundation on which it rests. *Perrimond v. U. S.*, 19 C. Cls. R., 509. Allowances for travel and subsistence are payable to officers or agents of the United States only when they are employed at other places than their residences. *Test v. U. S.*, 27 *ibid.*, 352; *Barre v. U. S.*, *ibid.*, 357.

The mileage allowance to an officer of the Army on the active list is fixed by law, the law in effect at the time the travel is performed and not by the law in effect when the order for the travel is issued. 1 Compt. Dec., 29.

An order to travel to a designated point, perform certain duty, and return is, in effect, two distinct orders, and the mileage allowances for each trip is fixed by the law at the time the travel in each case was commenced. *Ibid.*

It is not necessary that an order to travel should specifically designate places and routes. It may leave them to the discretion of the officer; and the subsequent approval of the Department will be conclusive upon the accounting officers. *Billings v. U. S.*, 23 C. Cls. R., 166. If public business was an element in an officer's circuitry of route, he is entitled to mileage therefor; if it was not, the Government is not answerable for the increased distance. *Du Bose v. U. S.*, 19 C. Cls. R., 514.

Where the route is left to the discretion of the officer his mileage should be calculated by the shortest usually traveled route, unless some good reason be shown for deviation. *Crosby v. U. S.*, 22 C. Cls. R., 13. (2 Compt., Dec. 544.)

The question as to the shortest usually traveled route between any two points is

**633.** No payment [of mileage] shall be made to any officer except by a paymaster of the Army.<sup>1</sup>

Mileage to be paid by Pay Department.

**634.** That hereafter the maximum sum to be allowed paymasters' clerks and the expert accountant of the Inspector-General's Department when traveling on duty shall be four cents per mile, and, in addition thereto, when transportation can not be furnished by the Quartermaster's Department, the cost of same actually paid by them, exclusive of sleeping or parlor car fare and transfers. *Act of February 27, 1893 (27 Stat. L., 480).*

Travel allowances to paymaster's clerks and to expert accountant.  
Feb. 27, 1893, v. 27, p. 430.

**635.** When an officer is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his residence at the time of his appointment, or to the place of his original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence, accord-

Travel pay to officers on honorable discharge.  
Jan. 11, 1812, c. 14, s. 22, v. 2, p. 674; Jan. 29, 1813, c. 16, s. 15, v. 2, p. 796; June 20, 1864, c. 145, s. 8, v. 13, p. 145; June 16, 1874, c. 285, v. 18, p. 72; Feb. 27, 1877, c. 69, v. 19, p. 244.  
Sec. 1289, R. S.

a question of fact, and to be determined by the best obtainable evidence. \* \* \* The time required in making the journey, the rates of fare, and the fact that an officer should be absent from his post of duty for the shortest possible period are important elements in determining the shortest usually traveled route in any particular case.

Evidence should accompany the voucher on which payment is made, to establish the fact that the distance is computed by the route which, for the time and occasion, is the shortest usually traveled route. Mileage can in no case be allowed for any distance in excess of the distance actually traveled, and if the distance actually traveled exceed the distance by the shortest usually traveled route, mileage can be allowed only for the distance by the shortest usually traveled route. 1 Compt. Dec., 115.

When it appears that an army officer was directed to travel on military duty and had no order to stop over, or delay on his journey, it must be presumed by the accounting officers that he was directed to go by the shortest usually traveled route, without necessary delay, and he will be allowed only the cost of "through limited tickets" for such travel. The accounting officer's look to the officer's orders as to the necessity for delay en route, not questioning the authority of the War Department to determine whether the officer's duty requires that he shall stop over on his journey. 1 Compt. Dec., 366.

The law relating to the cost of transportation contemplates that army officers traveling on duty without troops shall travel over the usually traveled routes in the mode usually adopted and by the conveyances usually employed. The exigencies of the service should be of an unusual character, not admitting of even the possibility of delay, to justify the officer in engaging the more costly transportation in fast or limited trains. *ibid.*

Officers of the Army and Navy on duty at the World's Columbian Exposition; the officer in charge of the Hot Springs Reservation, Ark., and engineer officers on duty under the orders of the Commissioners of the District of Columbia are entitled to mileage at the rate of 8 cents per mile, and no more, under the act of July 24, 1876 (19 Stat. L., 100), and other statutes. The act of July 16, 1892 (27 Stat. L., 177), applying only to the appropriation to which it is attached. Compt. Dec., 1893-94, 5, 88, 96. See, also, the decision of the Comptroller of the Treasury in the case of Major Halford. *Ibid.*, p. 275.

<sup>1</sup> In determining the mileage of officers of the Corps of Engineers traveling, without troops, on duty connected with works under their charge, no deduction shall be made for such travel as may be necessary on free or bond-aided or land-grant railways. Section 15, act of September 19, 1890 (26 Stat. L., 456).

When an officer of the Army travels under orders, without troops, on any free road or on any bond-aided Pacific railroad, over which the Quartermaster's Department is directed by law, or other competent authority, to furnish transportation in kind, not including sleeping or parlor-car accommodations, he is presumed to have been furnished transportation in kind by the United States and, therefore, to be not entitled to mileage for such travel. This presumption is rebutted, however, when he shows that he made the proper effort to obtain such transportation and failed, without fault, under circumstances which precluded him from procuring it. But when the travel is over any such bond-aided road, or over any free road, and there is no evidence of an effort to obtain a transportation order, or of circumstances which

<sup>1</sup>Travel allowances will be paid by the chief paymaster of the department in which the journey is completed. (Par. 1322, A. R., 1895.)

ing to his rank, for such time as may be sufficient for him to travel from the place of discharge to the place of his residence, or original muster into service, computed at the rate of one day for every twenty miles.<sup>1</sup>

precluded the officer from procuring it, the presumption is not rebutted and mileage can not be allowed. 3 Dig. Compt. Dec., 209.

An officer relieved from duty at a station and granted leave of absence before assignment to another, who receives an order of assignment before expiration of leave, is entitled to travel allowances from the place where he receives the order to his new station. (Par. 1332, A. R., 1895.)

An officer ordered home, at his own request, to await orders is entitled to mileage from his post to his home, such a journey constituting travel under orders. *Williamson v. U. S.*, 23 Wall, 411; *Phisterer v. U. S.*, 12 C. Cls. R., 98, and 94 U. S., 219. Where an officer who has received but has not yet taken advantage of a leave of absence is ordered to convey prisoners to another post, his leave is to that extent suspended, and he is entitled to mileage. *Andrews v. U. S.*, 15 C. Cls. R., 264.

The Army Regulations provide that the expiration of an officer's leave of absence must find him at his station. His station means his permanent station, not a place to which he was temporarily ordered and at which he accepted his leave of absence. *Andrews v. U. S.*, 15 C. Cls. R., 264. An officer's proper station can not be changed by his being ordered to perform a temporary duty while on leave of absence. *Ibid.* If an officer on leave of absence be ordered to temporary duty at the place where he may happen to be, and he be kept there until after his leave of absence expires and then be ordered to his proper station, he will not be entitled to mileage. *Barr v. U. S.*, 14 C. Cls. R., 272.

#### OFFICERS TRAVELING ON DUTY.

When an officer is ordered without troops from one post of duty to another, he will proceed by the shortest usually traveled route, without unnecessary delay. Upon his arrival at his new post he will immediately report in writing to the commanding officer the date of his departure from his former station, and submit a copy of his order, noting thereon the date he received it. If he shall appear to have made unnecessary delay en route, he will be required to explain the cause thereof. If the post commander deem the explanation unsatisfactory, he will forward the same, with a statement of the facts in the case, to the department commander. If the officer be superior in rank to the post commander, the required report will be made by the officer himself to the department commander. (Par. 65, A. R., 1895.)

Orders detaching an officer for special duty will direct him to return to his proper station on the completion of the duty assigned him, when it is intended that he shall do so. (Par. 66, *ibid.*)

Delays in obeying orders, in reporting for duty, or in returning to duty from leave can not be authorized except by the Secretary of War or the Commanding General of the Army. Such delays will be regarded as leaves of absence, unless it be stated in the order granting them that they are in the interest of the public service. (Par. 67, *ibid.*)

Orders contemplating the payment of mileage must state the special duty enjoined, and that the travel directed is necessary for the public service. They will not direct travel beyond the limits of the command of the officer who issues them. When a general officer is ordered on duty beyond the limits of his command, he may order an officer of his staff to accompany him; if ordered to change station, he may order the necessary change of station of his personal staff. (Par. 68, *ibid.*)

Staff officers not serving under department commanders will apply to the War Department for orders directing necessary travel on public business. (Par. 69, *ibid.*)

When urgent public duty has compelled travel, without authority previously obtained, the case will be immediately reported to the proper superior officer, whose approval in subsequent orders will be accepted as though previously issued. (Par. 70, *ibid.*)

Orders directing officers to visit Washington for the settlement of their accounts will be issued only by the Secretary of War. (Par. 71, *ibid.*)

Officers and enlisted men reporting as witnesses before a civil court should receive from the civil authorities the necessary expenses incurred in travel and attendance. Neither mileage nor travel allowances will be paid in such cases by the War Department. If, however, it is absolutely necessary to furnish them transportation in kind to enable them to appear, as witnesses for the Government, before a civil court of the United States, an account of such expenditure, together with the evidence that they were properly subpoenaed and did attend the court, will be forwarded to the War Department for presentation to the Department of Justice. Officers providing

<sup>1</sup> An officer who voluntarily quits the military service is not entitled to travel pay. 1 Compt. Dec., 370.

An officer whose resignation, tendered on the ground of physical disability, is accepted, becomes entitled to travel pay, provided the disability did not exist at the time of his entering the service, or was not incurred on account of his own misconduct during service. The length of service is material evidence in determining whether the disability existed prior to entry into the service. *Ibid.*



## STOPPAGES.

Par.	Par.
636. Pay of officers in arrears to be stopped.	637. Withholding officers' pay.

**636.** In case of deficiency of any article of military supplies, on final settlements of the accounts of any officer charged with the issue of the same, the value thereof shall

Stoppages for deficiencies.  
May 18, 1826, s. 3, v. 4, p. 174.  
Sec. 1304, R. S.

such transportation will notify the court, or the marshal thereof, that it was furnished to enable the witnesses to perform the requisite journeys in obedience to the summons. (Par. 72, *ibid.*)

## TRAVEL ALLOWANCES.

When an officer travels without troops under orders, he is entitled to the following allowances:

(1) To mileage at the rate of 4 cents per mile for the distance between the points named in the order, such distance to be computed over the shortest usually traveled route.

(2) To reimbursement of the cost of transportation actually paid by him over the route above specified, exclusive of sleeping and parlor car fares and charges for baggage. Officers will not be reimbursed for cost of transportation over free or bonded roads, but transportation in kind over such will be furnished by the Quartermaster's Department. (Par. 1321, A. R., 1895.)

Travel allowances will be paid by the chief paymaster of the department in which the journey is completed. (Par. 1322, *ibid.*)

To entitle an officer to travel allowances the travel must be specifically ordered previous to its commencement, or covered by certificate that the urgency of the duty was such as to prevent his obtaining previous orders, and accompanied by evidence of approval by proper authority. Such order will state the special duty enjoined, recite that the travel therein directed is necessary for the public service, and direct the officer to return to his station upon completion of assigned duty, if such return is contemplated. An order for travel, part of which is to be made with troops, should direct the Quartermaster's Department to furnish transportation for so much of the journey as is to be performed with troops. (Par. 1323, *ibid.*)

Orders will not prescribe lines of travel, except when necessary, and then the reasons will be set forth in the order. (Par. 1324, *ibid.*)

The original order, or certified copy, including indorsements, will accompany each voucher for travel allowances. (Par. 1325, *ibid.*)

Mileage will be computed in accordance with the lists of distances compiled by the Paymaster-General, whatever the route traveled. Exception to this rule will be made only when the terms of the order or the impracticability of the shortest usually traveled route compel the officer to take another, or when the journey is performed by a route shorter than that usually traveled. In such cases travel allowances will be computed over the actually traveled route. (Par. 1326, *ibid.*)

When an officer on leave of absence is ordered to rejoin his station, he will not be entitled to travel allowances unless the public service requires the performance of duty en route, in which case the order will specify the duty, the necessity therefor, and the points at which the duty will begin and end. (Par. 1327, *ibid.*)

When an officer is ordered, while on leave of absence, to accompany a detachment of recruits to the vicinity in which his regiment is serving, and on the completion of this duty to join his company, he returns to a status of leave as soon as relieved from duty with the recruits, and will proceed to join his company, without expense to the Government, unless the distance he may have to travel without troops should be in excess of what it would have been had he not received the order. (Par. 1328, *ibid.*)

An officer on leave of absence ordered to temporary duty involving travel without troops will receive travel allowances from place of receipt of order to place of performance of duty and return. (Par. 1329, *ibid.*)

When the station of an officer, serving either with or without troops, is changed while he is on leave of absence, he will, on joining his new station, be entitled to travel allowances from the place of receipt of the order to the new station, provided the journey is made without troops and the distance is not greater than that from the old to the new station; but if the distance be greater he will be entitled to travel allowances for a distance equal to that from the old to the new station only. Should it be necessary for the officer to return to his old station before proceeding to the new, authority for such return may be given by the officer who issued the order for the change of station. In such case the order for change of station will carry mileage only from the old to the new station. (Par. 1330, *ibid.*)

An officer under orders to change station who takes advantage of a leave of absence before he joins his new station is not deprived of the travel allowances to which he would be entitled had he not availed himself of the leave. The leave of absence merely suspends the execution of the order for change of station, and at the expiration of the leave the officer comes under the operation of the order, and in obeying it is entitled to full pay for the time necessary to perform the journey from his old to his new station. (Par. 1331, *ibid.*)

An officer traveling on duty in connection with public works (not arsenals, military surveys, or explorations) will receive travel allowances from the appropriation for the work, but if there be no appropriation he will receive travel allowances from the Pay Department. (Par. 1333, *ibid.*)

In the following cases no expense of travel is allowed: In joining for duty upon



be charged against the delinquent and deducted from his monthly pay, unless he shall show to the satisfaction of the Secretary of War, by one or more depositions setting forth the circumstances of the case, that said deficiency was not occasioned by any fault on his part. And in case of damage to any military supplies, the value of such damage shall be charged against such officer and deducted from his monthly pay, unless he shall, in like manner, show that such damage was not occasioned by any fault on his part.<sup>1</sup>

Withholding  
officers' pay.  
July 16, 1892, v.  
27, p. 177.  
Sec. 1766, R.S.

**637.** The pay of officers of the Army may be withheld under section seventeen hundred and sixty-six of the Revised Statutes on account of an indebtedness to the United States admitted or shown by the judgment of a court, but not otherwise unless upon a special order issued according to the discretion of the Secretary of War.<sup>2</sup> *Act of July 16, 1892 (27 Stat. L., 177).*

first appointment to the military service, or under the first order after a reinstatement or reappointment, or under an order to effect a transfer from one company or regiment to another, made at the request of the officers transferred. Assistant surgeons, graduates of the Military Academy, and officers appointed from the ranks, joining under first order after appointment or commission, are excepted from these provisions. (Par. 1334, *ibid.*)

Allowances for travel of officers summoned before committees of Congress are not proper charges upon the appropriations for the support of the Army. (Par. 1335, *ibid.*)

<sup>1</sup>The power given to the Secretary of War to order a stoppage of pay against a delinquent officer is exclusive and discretionary, but is not to be asserted against an officer acting under an order which he is bound to obey, and as to which he is expressly relieved from personal liability. Such an abuse of power would not tend to preserve but to subvert military order and discipline. The refusal of the Secretary of War to stop an officer's pay is not a decision upon the merits; it will not bind the Government nor preclude the Comptroller from causing a suit to be brought against the officer; it merely determines that the officer is so far without fault that the harsh and summary remedy of stopping his pay should not be resorted to. *Smith v. U. S.*, 24 C. Cls. R., 209, 215; *Billings v. U. S.*, 23 *ibid.*, 166, 175.

Where a paymaster receives no notice of stoppage and innocently pays an officer, the overpayment must be recovered from the officer. *Smith v. U. S.*, 23 C. Cls. R., 452.

When an officer has been overpaid, or is indebted to the United States for money or property, or has failed properly to account for the same, the chief of the bureau concerned will promptly notify him of the amount of his indebtedness, or his failure to account. If after such notice he does not refund, or make satisfactory explanation, or take proper action within a reasonable time, the matter will be reported to the Secretary of War. (Par. 1343, A. R., 1895.)

On the order of the Secretary of War, stoppages may be made against the pay of officers for overpayments, illegal disbursement, or loss through fraud or neglect of the public funds, and for deficiencies in, loss of, or damage to, military supplies, unless proof be furnished that the deficiency, loss, or damage was not occasioned by any fault on their part. (Par. 1344, *ibid.*)

The notice of stoppage of officers' pay will be prepared in the form of a monthly circular to paymasters, advising them of stoppages outstanding at its date. This circular will be submitted to the Secretary of War for his approval prior to its publication. When an officer's name is borne thereon, no payment of salary will be made to him which is not in accordance with the stoppage entry made against his name. (Par. 1345, *ibid.*)

Overpayments to an officer will be deducted on the first payment after a notice of stoppage against him is received, even if the pay accounts have been assigned. (Par. 1346, *ibid.*)

<sup>2</sup>See par. 658, *post*, for deductions on account of sales of subsistence on credit.

## PAY OF ENLISTED MEN.

Par.	Par.
638. Rates of pay to enlisted men.	652. Noncommissioned officers in Mexican war.
639. Retained pay.	653. Travel allowances to discharged soldiers.
640. Secretary of War to determine conduct.	654. Deposits of soldiers' savings.
641. Retained pay to bear interest.	655. Interest on deposits.
642. Retaining of pay discontinued, except deductions for Soldiers' Home.	656. Regulations for deposits to be made by Secretary of War.
643. Re-enlistment pay.	657. Deposits payable at discharge.
644. Continuous service pay.	658. Deductions for rations purchased by officers.
645. Period extended to three months.	659. Deductions for articles purchased by enlisted men.
646. Pay of retired enlisted men.	660. Deductions for tobacco purchased.
647. Pay during captivity.	661. Pay of volunteers.
648. Indian scouts.	
649. Hospital matrons and nurses.	
650. Soldiers' pay not assignable.	
651. Recruits to have credit at depots.	

**638.** The monthly pay of the following enlisted men of the Army shall, during their first term of enlistment, be as follows, with the contingent conditions thereto, hereinafter provided:

Sergeant-majors of cavalry, artillery, and infantry, twenty-three dollars.

Quartermaster-sergeants of cavalry, artillery, and infantry, twenty-three dollars.

Chief trumpeters of cavalry, twenty-two dollars.

Principal musicians of artillery and infantry, twenty-two dollars.

Saddler-sergeants of cavalry, twenty-two dollars.

First sergeants of cavalry, artillery, and infantry, twenty-five dollars.<sup>1</sup>

Sergeants of cavalry, artillery, and infantry, eighteen dollars.<sup>1</sup>

Corporals of cavalry and light artillery, fifteen dollars.

Corporals of artillery and infantry, fifteen dollars.

Saddlers of cavalry, fifteen dollars.

Blacksmiths and farriers of cavalry, fifteen dollars.

Trumpeters of cavalry, thirteen dollars.

Musicians of artillery and infantry, thirteen dollars.

Privates of cavalry, artillery, and infantry, thirteen dollars.

<sup>1</sup>The monthly pay of first sergeants of cavalry, artillery, and infantry was fixed at \$25, and that of sergeants of the same arms of service at \$18, by the act of February 27, 1893 (27 Stat. L., 478).

Hospital-stewards, first class, forty-five dollars.<sup>1</sup>

[Acting hospital stewards, twenty-five dollars.]<sup>1</sup>

[Privates of the Hospital Corps, eighteen dollars.]<sup>1</sup>

Ordnance-sergeants of posts, post commissary<sup>2</sup> and quartermaster sergeants,<sup>2</sup> thirty-four dollars.

Sergeant-majors of engineers, thirty-six dollars.

Quartermaster-sergeants of engineers, thirty-six dollars.

Sergeants of engineers and ordnance, thirty-four dollars.

Corporals of engineers and ordnance, twenty dollars.

Musicians of engineers, thirteen dollars.

Privates (first class) of engineers and ordnance, seventeen dollars.

Privates (second class) of engineers and ordnance, thirteen dollars.

[Sergeants (first class) of the Signal Corps, forty-five dollars.]<sup>3</sup>

[Sergeants (second class) of the Signal Corps, thirty-four dollars.]

Artificers, cavalry, artillery, and infantry, fifteen dollars.

Wagoners, cavalry, artillery, and infantry, fourteen dollars.<sup>4</sup>

Pay of chief musicians.

Sec. 3, Aug. 1, 1894, v. 28, p. 216.

The chief musicians of regiments shall receive sixty dollars a month and the allowances of a quartermaster-sergeant.<sup>5</sup>

#### RETAINED PAY.

Retained pay.  
May 15, 1872, c.

160, s. 2, v. 17, p. 116; Mar. 16, 1895, v. 29 p.

Sec. 1281, R. S.

**639.** To the rates of pay stated in the preceding section one dollar per month shall be added for the third year of enlistment, one dollar more per month for the fourth year, and one dollar more per month for the fifth year, making in all three dollars' increase per month for the last year of the first enlistment of each enlisted man named in said section. But this increase shall be considered as retained pay, and shall not be paid to the soldier until his discharge

<sup>1</sup> The monthly pay of hospital stewards fixed at \$45, and that of acting hospital stewards at \$25, by the act of March 1, 1887 (24 Stat. L., 435). The pay of privates of the Hospital Corps was fixed at \$18 per month by the act of July 13, 1892 (27 Stat. L., 120).

<sup>2</sup> The monthly pay of post commissary-sergeants was fixed at \$34 by the act of March 3, 1873 (17 Stat. L., 485), and that of post quartermaster-sergeants at the same rate by the act of July 5, 1884 (23 Stat. L., 107).

<sup>3</sup> The pay of sergeants of the first class in the Signal Corps was fixed at \$45 per month by the act of October 1, 1890 (26 Stat. L., 653). The pay of sergeants of the second class in the Signal Corps was fixed at \$34 per month by the act of June 20, 1878 (20 Stat. L., 219).

The enlisted men of the Army Service Corps, stationed at the Military Academy, receive the same pay and allowances as enlisted men of corresponding grades in the artillery. Act of June 20, 1890 (26 Stat. L., 653). See the chapters entitled ENLISTED MEN AND THE MILITARY ACADEMY.

<sup>4</sup> For pay of Indian scouts see par. 648 *post*.

<sup>5</sup> By the terms of section 3, act of August 1, 1894 (28 Stat. L., 216), chief musicians, artificers, and wagoners theretofore excluded from the benefits of the act of May 15, 1872 (paragraphs 643, 644 *post*), became entitled to said benefits.

from the service, and shall be forfeited unless he serves honestly and faithfully to the date of discharge.<sup>1</sup>

640. That the Secretary of War shall determine what misconduct shall constitute a failure to render honest and faithful service within the meaning of this act; but no soldier who has deserted at any time during the term of an enlistment shall be deemed to have served such term honestly and faithfully.<sup>2</sup> *Act of June 16, 1890 (26 Stat., L., 157).*

Secretary of War to determine conduct.

Limitation as to deserters.  
June 16, 1890, v. 26, p. 157.

641. That the sums retained from the monthly pay of enlisted men, in accordance with sections twelve hundred and eighty-one and twelve hundred and eighty-two of the Revised Statutes,<sup>3</sup> shall be treated as deposits, upon which interest shall be paid as provided in sections thirteen hundred and five, thirteen hundred and six, thirteen hundred and seven, and thirteen hundred and eight<sup>4</sup> of the Revised Statutes, the said sums to bear interest from the end of the year of the soldier's enlistment in which they shall have accrued. *Act of June 16, 1890 (26 Stat. L., 157).*

Retained pay to bear interest.  
June 16, 1890, v. 26, p. 157.

642. That hereafter no pay shall be retained, but this provision shall not apply to deductions authorized on account of the Soldiers' Home.<sup>5</sup> *Act of March 16, 1896 (29 Stat. L., 60).*

No pay to be retained hereafter.  
Mar. 16, 1896, v. 29, p. 60.

#### RE-ENLISTMENT AND CONTINUOUS SERVICE PAY.

643. All enlisted men mentioned in section twelve hundred and eighty, who, having been honorably discharged,

Re-enlistment pay.

<sup>1</sup>The act of June 16, 1890 (26 Stat. L., 157), which required \$4 per month to be retained from the pay of all enlisted men in the Army during their first year of enlistment was repealed by section 3 of the act of August 1, 1894 (28 Stat. L., 215). The provisions of this section extended to all enlisted men in the Army, except general-service clerks and messengers, by section 3 of the act of August 1, 1894 (28 Stat. L., 215).

To entitle the soldier to this retained pay, it is necessary to show, first, his discharge from the service; second, an honest and faithful service to the date of his discharge. It is not necessary that such forfeiture should have been made in pursuance of the sentence of a court-martial. *U. S. v. Kingsley*, 137 U. S., 87, 90.

Retained pay is authorized by law. The Secretary of War has no control over it. He only determines whether the service has been honest and faithful. The operation of the law follows immediately upon his decision, and either vests in the soldier the right to receive the pay or deprives him of it, according to the character of the service he has rendered. 3 Dig. Compt. Dec. 231.

<sup>2</sup>Under the authority conferred by this statute the Secretary of War has decided that retained pay will be forfeited for the following causes:

May 15, 1872, c. 160, s. 3, v. 17, p. 116; Aug. 4, 1854, c. 247, s. 2, v. 10, p. 575; Aug. 1, 1894, v. 28, p. 215.  
Sec. 1282, R. S.

(1) Desertion.

(2) When the soldier is in confinement under a general court-martial sentence expressly imposing imprisonment until or beyond the expiration of his term; when discharged under sentence of general court-martial; when discharged by order from the War Department specifying forfeiture, or because of imprisonment by the civil authority.

(3) When the soldier is discharged for minority concealed at enlistment, or for other cause involving fraud in enlistment, or for disability caused by his misconduct.

(4) Upon the approved finding of a board of officers called under paragraph 148, that the soldier has not served honestly and faithfully to the date of discharge.

The cause of forfeiture will be stated on the muster and pay rolls and on the final statements of the soldier. (Par. 1369, A. R., 1895.)

<sup>3</sup>Paragraphs 639 and 640 *ante*.

<sup>4</sup>Paragraphs 654, 655, 656 and 657 *post*.

<sup>5</sup>Since March 16, 1896, paragraphs 639, 640, and 641, have applied only to the settlement of the accounts of enlisted men in whose cases retained pay had accrued prior to the passage of this act.

have re-enlisted or shall re-enlist within three months thereafter, shall, after five years' service, including their first enlistment, be paid at the rate allowed in said section to those serving in the fifth year of their first enlistment: *Provided*, That one dollar per month shall be retained from the pay of the re-enlisted men, of whatever grade, named in section twelve hundred and eighty-one during the whole period of their re-enlistment, to be paid to the soldier on his discharge, but to be forfeited unless he shall have served honestly and faithfully to the date of discharge.<sup>1</sup> *Act of August 1, 1894 (28 Stat. L., 215).*

Continuous service pay.

Reenlistment.  
Aug. 4, 1854, c. 247, s. 2, v. 10, p. 575; May 15, 1872, c. 160, s. 4, v. 17, p. 117; Aug. 1, 1894, s. 3, v. 28, p. 215.

Sec. 1284, R.S.

**644.** Every soldier who, having been honorably discharged, re-enlists within three months thereafter, shall be further entitled, after five years' service, including his first enlistment, to receive, for the period of five years next thereafter, two dollars per month in addition to the ordinary pay of his grade; and for each successive period of five years of service, so long as he shall remain continuously in the Army, a further sum of one dollar per month. The past continuous service, of soldiers now in the Army, shall be taken into account, and shall entitle such soldier to additional pay according to this rule; but services rendered prior to August fourth, eighteen hundred and fifty-four, shall in no case be accounted as more than one enlistment.

Period extended to three months.

R. S., secs. 1282, 1284, amended.

Additional pay.

Aug. 1, 1894, s. 3, v. 28, p. 215.

**645.** That the period within which soldiers may re-enlist with the benefits conferred by sections twelve hundred and eighty-two and twelve hundred and eighty-four<sup>2</sup> of the Revised Statutes, be, and the same is hereby, extended to three months; and hereafter every enlisted man in the Army, excepting general service clerks and general service messengers, shall be entitled to all the benefits conferred by sections twelve hundred and eighty-one<sup>3</sup> and twelve hundred and eighty-two<sup>2</sup> of the Revised Statutes: *Provided*, That to entitle them to the additional pay authorized by section twelve hundred and eighty-one,<sup>4</sup> for men serving in the third, fourth, and fifth years, the service must have been continuous within the meaning of this section.<sup>4</sup> *Sec. 3, act of August 1, 1894 (28 Stat. L., 215).*

Continuous service.

<sup>1</sup> The authority to retain pay conferred by section 1281, Revised Statutes (paragraph 639, ante), was withdrawn as to all enlisted men by the act of March 16, 1896 (29 Stat. L., p. 60). See paragraph 642, ante.

<sup>2</sup> Paragraphs 643 and 644, ante.

<sup>3</sup> Paragraph 639, ante.

<sup>4</sup> Page 639, ante. Section 1283, Revised Statutes, contains the provision that enlisted men, now in the service, shall receive the rates of pay established in this chapter according to the length of their service.

The act of February 27, 1893 (27 Stat. L., 478), which prohibited the reenlistment of privates of over ten years' service or who were over 35 years old, except such as and served as enlisted men for twenty years or upward, was repealed by the act of August 1, 1894 (28 Stat. L., 215), and the provisions of section 1284, Revised Statutes, were extended to all enlisted men in the Army, except general-service clerks and messengers. See, also, paragraphs 1365, 1366, and 1367, Army Regulations, 1895.

## PAY OF RETIRED ENLISTED MEN.

646. That when an enlisted man has served as such thirty years in the United States Army or Marine Corps, either as private or non-commissioned officer, or both, he shall by application to the President be placed on the retired list hereby created, with the rank held by him at the date of retirement, and he shall receive thereafter seventy-five per centum of the pay and allowances of the rank upon which he was retired: *Provided*, That if said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be computed as double time in computing the thirty years necessary to entitle him to be retired.<sup>1</sup> *Act of September 30, 1890 (26 Stat. L., 504)*. That hereafter a monthly allowance of nine dollars and fifty cents be granted in lieu of the allowance for subsistence and clothing.<sup>2</sup> *Act of March 16, 1896 (29 Stat. L., 62)*.

Retired enlisted men.

War service; how computed.

Sec. 1283, R.S.

Sept. 30, 1890, v.

26, p. 504; Mar. 16,

1896, v. 29, p. 62.

## MISCELLANEOUS PROVISIONS.

647. Every non-commissioned officer and private of the Regular Army, and every officer, non-commissioned officer, and private of any militia or volunteer corps in the service of the United States who is captured by the enemy, shall be entitled to receive during his captivity, notwithstanding the expiration of his term of service, the same pay, subsistence, and allowance to which he may be entitled while in the actual service of the United States; but this provision shall not be construed to entitle any prisoner of war of such militia corps to any pay or compensation after the date of his parole, except the traveling expenses allowed by law.

Pay during captivity.

Mar. 30, 1814, c.

37, s. 14, v. 3, p.

115.

Sec. 1288, R.S.

648. Indians, enlisted or employed by order of the President as scouts, shall receive the pay and allowances of cavalry soldiers. That so much of the Army appropriation act of twenty-fourth July, eighteen hundred and seventy-six, as limits the number of Indian scouts to three hundred is hereby repealed; and sections ten hundred and ninety-four and eleven hundred and twelve of the Revised Statutes, authorizing the employment of one thousand Indian scouts, are hereby continued in force: *Provided*,

Pay of Indian scouts; allow-

ance for horses.

July 23, 1866, c.

299, s. 6, v. 14, p.

333.

Sec. 1276, R.S.

<sup>1</sup>This statute replaces the act of February 14, 1885 (23 Stat. L., 305), on the same subject.

<sup>2</sup>See also the title *Retirement of Enlisted Men* in the chapter entitled ENLISTED MEN.

That a proportionate number of non-commissioned officers may be appointed. And the scouts, when they furnish their own horses and horse-equipments, shall be entitled to receive forty cents per day for their use and risk so long as thus employed. *Act of August 12, 1876 (19 Stat. L., 131).*

Hospital matrons; female nurses.

Mar. 16, 1802 c.

9 s. 5, v. 2, p. 134;

Aug. 3, 1861, c. 42

s. 6, v. 12, p. 288;

July 4, 1864, res.

75, v. 13, p. 410.

**649.** Hospital matrons in post or regimental hospitals shall receive ten dollars a month, and female nurses in general hospitals shall receive forty cents a day. One ration in kind or by commutation shall be allowed to each.

Sec. 1277, R. S.

Soldiers' pay not assignable.

May 8, 1792, c.

37, s. 4, v. 1. Sec.

Recruits to have credit, etc., at depots for recruits

June 30, 1882,

sec. 3, v. 22, p. 122.

**650.** No assignment of pay by a non-commissioned officer or private, previous to his discharge, shall be valid.<sup>1</sup>

1291, R. S.

**651.** That traders and laundrymen at depots for recruits in the Army be, and hereby are, authorized to furnish such recruits, on credit, with laundry work and such articles as may be necessary for their cleanliness and comfort, at a total cost not to exceed seven dollars in value per man. That muster and pay rolls be made out showing the amounts the recruits respectively owe to the traders and laundrymen, and signed by them before leaving the depot, and that the traders and laundrymen be paid on such rolls, the amount paid for each recruit to be noted accordingly on the muster and descriptive rolls, in order that it may be withheld, after he joins his company, by the paymaster, at the first subsequent payment, under such rules and regulations as may be adopted by the War Department: *Provided*, That this provision shall apply only to recruits on their enlistment, and the credit shall only be allowed on the written order of the regular recruiting officer at said station.<sup>2</sup> *Sec. 3, act of June 30, 1882 (22 Stat. L., 122).*

Non-commissioned officers of Mexican war.

Mar. 3, 1847, c.

61, s. 17, v. 9, p.

186; Aug. 4, 1854,

c. 274, s. 3, v. 10, p.

575.

Sec. 1286, R. S.

**652.** Non-commissioned officers who served in the war with Mexico, and have been recommended by the commanding officers of their regiments for promotion by brevet to the lowest grade of commissioned officer, but have not received such recommended promotion, shall be entitled to additional pay at the rate of two dollars per month, although they may not have remained continuously in the service.

<sup>1</sup> The transfer by an enlisted man of a claim for pay due on his final statements will be recognized only when made after discharge, in writing, indorsed on the final statements, signed by the soldier, and witnessed by a commissioned officer or by some other reputable person known to the paymaster. The person witnessing the transfer must indorse on the discharge the fact of transfer of the final statements, and on the final statements the fact that such indorsement has been made on the discharge (Par. 1388, A. R., 1895.)

<sup>2</sup> The act of June 28, 1893 (27 Stat. L., 426), directing that no more post traders be appointed, will operate to restrict this privilege to laundrymen at depots. Paragraph 1192, Army Regulations, 1895, requires all laundry charges to be charged to the recruit on his clothing account and to be noted on his descriptive and assignment card.

TRAVEL ALLOWANCES OF DISCHARGED ENLISTED MEN.<sup>1</sup>

**653.** When a soldier is discharged from the service, except by way of punishment for an offense, he shall be allowed transportation and subsistence from the place of his discharge to the place of his enlistment, enrollment, or original muster into the service. The Government may furnish the same in kind, but in case it shall not do so, he shall be allowed travel-pay and commutation of subsistence for such time as may be sufficient for him to travel from the place of discharge to the place of his enlistment, enrollment, or original muster into the service, computed at the rate of one day for every twenty miles: *Provided*, That no enlisted man discharged by order of the Secretary of War for disability caused by his own misconduct shall be entitled to the travel allowances provided for in section twelve hundred and ninety of the Revised Statutes.<sup>2</sup> *Act of March 16, 1896 (29 Stat. L., 63).*

Travel allowances to discharged soldiers. Forfeited by misconduct proviso. Jan. 11, 1812, c. 14, s. 22, v. 2, 674; Jan. 29, 1813, c. 10, s. 15, v. 2, p. 796; June 20, 1864, c. 145, s. 8, v. 13, p. 145; June 16, 1874, c. 285, v. 18, p. 72; Feb. 27, 1877, c. 69, v. 19, p. 244; Mar. 16, 1896, v. 29, p. 63. Sec. 1290, R. S.

<sup>1</sup> The travel allowances of enlisted men consist of transportation and subsistence, which are furnished in kind in all practicable cases. For statutory provisions respecting transportation see note 1 to paragraph 545, ante; for provisions respecting subsistence see paragraph 580, ante.

<sup>2</sup> An enlisted man of the Army is not entitled to transportation from the place of his discharge to the place of his enlistment, under section 1286, Revised Statutes, unless his connection with the service be actually and finally severed. Such connection is not so severed when he is discharged to accept promotion, discharge in that case being a formality attendant upon his promotion. *Reichmann v. U. S.*, 24 C. Cls. R., 485. A soldier discharged at his own request is not entitled to travel pay. *Thornton v. U. S.*, 27 *ibid.*, 342.

Traveling allowances to discharged soldiers are computed by taking the distance in miles by the shortest usually traveled route from place of discharge to that of enlistment, and allowing one day's pay, and subsistence at the rate of 30 cents, for every 20 miles of travel. If in the computation there remains a fraction of 10 miles or more, it will be reckoned as a full day; if less, it will not be considered. If transportation has been furnished for any part of the distance, that part will be excluded from the computation of travel pay, but subsistence for the full distance will be allowed. (Par. 1385, A. R., 1895.)

An enlisted man discharged for minority concealed at enlistment, or for other cause involving fraud on his part in the enlistment, is not entitled to pay and allowances, including those for travel, and will not receive final statements unless deposits or detained pay are due him, in which case final statements, containing only a list of his deposits or the amount of detained pay, will be furnished. (Par. 1386, *ibid.*)

Recruits are entitled to pay and allowances when discharged on certificates of disability. When discharged for any cause involving fraud on their part at enlistment, paragraph 1386 will govern. (Par. 1387, *ibid.*)

## DESERTERS.

An enlisted man charged with desertion will not receive pay until his offense has been investigated by a court-martial or he has been restored to duty without trial. (Par. 1380, A. R. 1895.)

Every deserter forfeits all pay and allowances due at the date of desertion. Stoppages and forfeitures then due will be deducted from his arrears of pay, and, if not so satisfied, from pay due after apprehension. The company commander will note upon the first muster roll after apprehension all data necessary to a complete settlement of the soldier's account from the date of last payment, and will carry the account to subsequent rolls until the settlement is made. No settlement of the pay account of any enlisted man will be made on the rolls until sufficient pay shall have accrued to satisfy all dues to the United States and pay a balance to the soldier. The required data will include date of last payment, desertion, and apprehension, credits at date of desertion on account of clothing, unsatisfied forfeitures under prior sentences, and dues to the United States at date of desertion on account of clothing, subsistence, ordnance, etc. If, while absent in desertion, he illegally enlisted in another organization, the date of last payment in such enlistment and all stoppage due the United States at date of surrender or apprehension will be stated. (Par. 1381, *ibid.*)



## DEPOSITS.

Deposits of soldiers' savings.

May 15, 1872, c. 161, s. 1, v. 17, p. 117; Mar. 3, 1883, v. 22, p. 456.

Sec. 1305, R. S.

**654.** Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any Army paymaster, who shall furnish him a deposit-book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The money so deposited shall be accounted for in the same manner as other public funds, and shall pass to the credit of the appropriation for the pay of the Army, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposit be exempt from liability for such soldier's debts: *Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same.<sup>1</sup>

Interest on deposits.

May 15, 1872, c. 161, s. 2, v. 17, p. 117.

Sec. 1306, R. S.

**655.** For any sums not less than five dollars so deposited for the period of six months or longer, the soldier, on his final discharge, shall be paid interest at the rate of four per centum per annum.<sup>2</sup>

Regulations for deposits to be made by Secretary of War.

May 15, 1872, c. 161, s. 4, v. 17, p. 117.

Sec. 1307, R. S.

**656.** The system of deposits herein established shall be carried into execution under such regulations as may be established by the Secretary of War.<sup>3</sup>

<sup>1</sup> The act of June 16, 1890 (26 Stat. L., 157), contains the requirement that the sums retained from the monthly pay of enlisted men under sections 1281 and 1282, Revised Statutes, shall be treated as deposits upon which interest shall be paid in accordance with sections 1305, 1306, 1307, and 1308, Revised Statutes.

<sup>2</sup> Amended by the act of March 3, 1883 (22 Stat. L., 456), so as to authorize the deposit, at interest, of sums not less than \$5 in amount.

<sup>3</sup> Under the authority conferred by this statute the following regulations have been prepared and promulgated by the Secretary of War:

Any enlisted man, not retired, may deposit his savings with any paymaster in sums not less than \$5, the same to remain so deposited until final payment on discharge. The paymaster will furnish the depositor with a book in which each deposit, with name of depositor, date, place, and amount, in words and figures, will be entered in the form of a certificate, signed by the paymaster and company commander. The company commander will keep in the company record book an account of every deposit made by the soldier; and after each regular payment he, and all officers having charge of detachments of enlisted men at date of deposit, will transmit, direct to the Paymaster-General, a list of names of depositors, showing in each case the date, place, and amount of deposit, and name of paymaster receiving the same. These lists, before transmittal, will be examined and compared with the record of deposits on the company or detachment book and the deposit book of the soldier. Should a soldier who has made a deposit be transferred or desert, the fact will be promptly reported direct to the Paymaster-General by the officer in command of the company or detachment to which he belonged. In case of transfer his descriptive list will be made to exhibit the date and amount of each deposit. (Par. 1371, A. R., 1895.)

On the discharge of a soldier the date and amount, in words and figures, of each of his deposits will be entered upon his final statements, and his deposit book will be taken up by the paymaster who pays him and filed with the voucher of payment. In case deposits are forfeited by desertion, the amounts of the same will be entered on the final statements under the head "Remarks," and the facts and authority for such forfeiture given. (Par. 1372, *ibid.*)

Before delivering final statements upon which deposits are credited, the officer signing them will ascertain whether the soldier has the deposit book; and, if so, instruct him to present it to the paymaster. Should he claim to have lost it, the officer will cause his affidavit to that effect to be taken and attached to the statements. The affidavit will clearly state the circumstances attending loss of the book, and show that the soldier has not sold or assigned it. Upon this evidence the paymaster may pay and the responsibility for the correctness of amounts credited on the statements will rest with the officer certifying them. (Par. 1373, *ibid.*)

Paymasters will not pay deposits except on final statements. When they are not paid the soldier should forward his deposit book or the evidence referred to in the

**657.** The amounts of deposits and clothing-balances accumulating to the soldier's credit under sections thirteen hundred and two and thirteen hundred and five, shall, when payable to him upon his discharge, be paid out of the appropriations for "pay of the Army" for the then current fiscal year.

Deposits payable at discharge.  
May 15, 1872, c. 161, s. 5, v. 17, p. 117.  
Sec. 1308, R. S.

## MISCELLANEOUS PROVISIONS.

**658.** The amount due from any officer for rations purchased on credit, or for any article designated by the inspectors-general of the Army and purchased on credit from commissaries of subsistence, shall be deducted from the payment made to such officer next after such purchase shall have been reported to the Paymaster-General.

Deductions for rations purchased by officers.  
MAR. 3, 1865, c. 81, s. 5, v. 13, p. 497; July 28, 1866, c. 299, s. 25, v. 14, p. 336.  
Sec. 1299, R. S.

**659.** The amount due from any enlisted man for articles designated by the inspectors-general of the Army, and sold to him on credit by commissaries of subsistence, shall be deducted from the payment made to him next after such sale shall have been reported to the Paymaster-General.

For articles purchased by enlisted men.  
July 28, 1866, c. 299, s. 25, v. 14, p. 336.  
Sec. 1300, R. S.

**660.** The amount due from any enlisted man for tobacco sold to him at cost prices by the United States shall be deducted from his pay in the manner provided for the settlement of clothing accounts.<sup>1</sup>

For tobacco purchased.  
MAR. 3, 1865, c. 81, s. 6, v. 13, p. 497.  
Sec. 1301, R. S.

**661.** In all matters relating to the pay and allowances of officers and soldiers of the Army of the United States, the same rules and regulations shall apply to the Regular Army and to volunteer forces mustered into the service of the United States for a limited period.

Pay of volunteers.  
MAR. 2, 1867, c. 159, s. 2, v. 14, p. 435.  
Sec. 1292, R. S.

preceding paragraph to the Paymaster-General. Enlisted men should be informed of the importance of preserving deposit books as the only certain means of insuring prompt repayment. (Par. 1374, *ibid.*)

On the death of a soldier each deposit, with amount, date, place, and paymaster with whom deposited, will be noted in the inventory of his effects, and on the accompanying final statements with which his deposit book will be filed. (Par. 1377, *ibid.*)

Both deposits and interest will be forfeited by desertion, but are exempt from forfeiture by sentence of court-martial and from liability for the soldier's debts. (Par. 1378, *ibid.*)

The retained pay of enlisted men will be treated as deposits to the extent that it draws interest from the end of the year of the enlistment in which retained. It is subject to forfeiture for any of the causes set forth in paragraph 1369, and is carried to the credit of the soldier on his final statements, subject to deduction for debts due the United States at the date of discharge. (Par. 1379, *ibid.*)

The act of August 6, 1894 (28 Stat. L., 236), contains the proviso "that hereafter sums known as detained pay, which have already been or may hereafter be withheld from the monthly pay of enlisted men of the Army in obedience to court-martial sentences, shall when repaid become a charge against the fund 'pay of the Army' for the year in which said enlisted men have been or may be discharged."

<sup>1</sup>For provisions of statutes respecting deductions from the pay of enlisted men for the money value of clothing not drawn, see sections 1302 and 1308, Revised Statutes. For pay (\$2 per month) to enlisted men to whom certificates of merit have been awarded under section 1285, Revised Statutes, see the chapter entitled BREVETS, MEDALS OF HONOR, AND CERTIFICATES OF MERIT. For provisions relating to the reimbursement of the United States for damages done to arms, equipments, etc., see paragraph 870 in the chapter entitled THE ORDNANCE DEPARTMENT.

# CHAPTER XX.

## THE MEDICAL DEPARTMENT.

Par.	Par.
662. The Medical Department; organization.	670. Supervision of cooking.
663. Grades of certain medical officers.	671. Purchases for sick in hospital.
664. Examinations.	672. Professional attendance on families of officers.
665. Volunteer service of assistant surgeons.	673. The Hospital Corps.
666. Examination of assistant surgeons for promotion.	674. Hospital stewards.
667. Rank and precedence.	675. Rank and pay.
668. Right of command.	676. Examination.
669. Assignment to duty.	677. Privates; duties.
	678. Pay and allowances.
	679. Acting hospital stewards.

The Medical Department; organization.

Sec. 4, June 23, 1874, v. 18, p. 244; Mar. 1, 1887, v. 24, p. 435; July 26, 1870, v. 19, p. 61; July 27, 1892, v. 27, p. 276; Aug. 18, 1894, v. 28, p. 403.

Original vacancies in grade of assistant surgeon; how filled. Contract surgeons limited.

662. That the Medical Department of the Army<sup>1</sup> shall hereafter consist of one Surgeon-General, with the rank, pay, and emoluments of a brigadier general; two assistant surgeon-generals, with the rank, pay, and emoluments of colonels, and two deputy surgeon generals, with the rank, pay, and emoluments of lieutenant-colonels,<sup>2</sup> who shall give the same bonds which are or may be required of assistant paymasters-general of like grade, and shall, when not acting as purveyors, be assignable to duty as surgeons by the President; fifty surgeons, with the rank, pay, and emoluments of majors; one hundred and ten assistant surgeons, with the rank, pay, and emoluments of lieutenants of cavalry<sup>3</sup> for the first five years' service, and with the rank, pay, and emoluments of captains of cavalry after five years' service;<sup>4</sup> and all the original vacancies in the grade of assistant surgeon shall be filled by selection by competitive examination. And the number of contract-surgeons shall be limited to seventy-five on or before the first day of

<sup>1</sup> Section 1168, Revised Statutes, was replaced by section 4, of the act of June 23, 1874 (18 Stat. L., 244), reorganizing the staff corps of the Army. For general provisions respecting appointments and promotions in the Medical Department, see the chapter entitled THE STAFF DEPARTMENTS.

<sup>2</sup> The act of July 27, 1892 (27 Stat. L., 276), provided that the grade of officers holding the rank of colonel in the Medical Department should be that of assistant surgeon general, and that the grade of officers holding the rank of lieutenant-colonel should be that of deputy surgeon general.

<sup>3</sup> The number of assistant surgeons was fixed at 125 by the act of July 26, 1876 (19 Stat. L., 61), and at 110 by the act of August 18, 1894 (28 Stat. L., 403).

<sup>4</sup> The office of medical storekeeper was abolished by the act of July 26, 1876 (19 Stat. L., 61).

January in the year eighteen hundred and seventy-five; and thereafter no more than that number shall be employed.<sup>1</sup>

*Sec. 4, act of June 23, 1874 (18 Stat. L., 244).*

**663.** That from and after the passage of this act the grade of certain medical officers of the Army below that of Surgeon-General shall be as follows: Those holding the rank of colonel, assistant surgeon-generals; those holding the rank of lieutenant-colonel, deputy surgeon-generals.

Grades of certain medical officers.  
July 27, 1892, v. 27, p. 276.

**664.** No person shall receive the appointment of assistant surgeon unless he shall have been examined and approved by an Army medical board, consisting of not less than three surgeons or assistant surgeons, designated by the Secretary of War; and no person shall receive the appointment of surgeon unless he shall have served at least five years as an assistant surgeon in the Regular Army, and shall have been examined and approved by an Army medical board, consisting of not less than three surgeons, designated as aforesaid.<sup>2</sup>

Examinations.  
June 30, 1834, c. 133, s. 1, v. 4, p. 714.  
Sec. 1172, R. S.

**665.** Assistant surgeons who have served three years as surgeons or assistant surgeons in the volunteer forces [shall]<sup>3</sup> be eligible to promotion to the grade of captain.

Volunteerservice of assistant surgeons.  
Mar. 2, 1867, c. 145, s. 5, v. 14, p. 423.

**666.** That before receiving the rank of captain of cavalry, assistant surgeons shall be examined, under the provisions of an act approved October first, eighteen hundred and ninety, entitled "An act to provide for the examination of certain officers of the Army and to regulate promotions therein." *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

Sec. 1170, R. S.  
Examination of assistant surgeons for promotion.  
V. 26, p. 562.  
Sec. 2, July 27, 1892, v. 27, p. 276.

**667.** Officers of the Medical Department shall take rank and precedence in accordance with date of commission or appointment, and shall be so borne on the official Army Register. *Act of July 5, 1884 (23 Stat. L., 111).*

Rank and precedence.  
July 5, 1884, v. 23, p. 111.

**668.** Officers of the Medical Department of the Army shall not be entitled, in virtue of their rank, to command in the line or in other staff corps.

Right of command.  
Feb. 11, 1847, c. 8, s. 8, v. 9, p. 125.  
Sec. 1169, R. S.

**669.** That medical officers of the Army may be assigned by the Secretary of War to such duties as the interests of the service may demand.<sup>4</sup>

Assignment to duty.  
Sec. 3, July 27, 1892, v. 27, p. 277.

<sup>1</sup>Since the act of July 16, 1892 (27 Stat. L., 175), contract surgeons, as such, have not been provided for in the annual appropriation bills. The number of officers of this grade was fixed at 75 by the act of June 23, 1874 (18 Stat. L., 244); at 75 by the acts of July 30, 1886 (24 Stat. L., 95), and February 9, 1887 (24 Stat. L., 396); and at 50 by the acts of September 22, 1888 (25 Stat. L., 482), and March 2, 1889 (25 Stat. L., 827).

<sup>2</sup>No allowance will be made for the expenses of persons undergoing examination, but those who receive appointments will be entitled to travel allowances in obeying the first order assigning them to duty (Par. 1395, A. R., 1895).

<sup>3</sup>The word "shall" omitted from the roll.

<sup>4</sup>The Medical Department, under the direction of the Secretary of War, is charged with the duty of investigating the sanitary condition of the Army and making recommendations in reference thereto, with the duty of caring for the sick and wounded, making physical examinations of officers and enlisted men, and furnishing all medical and hospital supplies, except for public animals. (Par. 1392, A. R., 1895).

Supervision of cooking.

Mar. 3, 1863, c. 78, s. 8, v. 12, p. 744.

Sec. 1174, R. S.

**670.** The officers of the Medical Department of the Army shall unite with the officers of the line, under such rules and regulations as shall be prescribed by the Secretary of War, in superintending the cooking done by the enlisted men; and the Surgeon-General shall promulgate to the officers of said corps such regulations and instructions as may tend to insure the proper preparation of the ration of the soldier.

Purchases for sick in hospital.

Aug. 3, 1861, c. 42, s. 14, v. 12, p. 289.

Sec. 1175, R. S.

**671.** Such quantities of fresh or preserved fruits, milk, butter, and eggs as may be necessary for the proper diet of the sick, may be allowed in hospitals. They shall be provided under such rules as the Surgeon-General, with the approval of the Secretary of War, shall prescribe.

Professional attendance on families of officers, etc.

July 5, 1884, v. 23, p. 112.

**672.** The medical officers of the Army and contract surgeons shall whenever practicable attend the families of the officers and soldiers free of charge.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 112).*

#### THE HOSPITAL CORPS.

The Hospital Corps.

Mar. 1, 1887, v. 24, p. 435; Mar. 16, 1895, v. 29, p. 61.

**673.** That the Hospital Corps of the United States Army shall consist of hospital stewards, acting hospital stewards, and privates; and all necessary hospital services in garrison, camp, or field (including ambulance service) shall be performed by the members thereof, who shall be regularly enlisted in the military service; said Corps shall be permanently attached to the Medical Department, and shall not be included in the effective strength of the Army nor counted as a part of the enlisted force provided by law.<sup>2</sup> *Act of March 1, 1887 (24 Stat. L., 435).*

<sup>1</sup> Civilians employed in post exchanges are held to be entitled to the privileges of medical and hospital attendance and purchase of medicines allowed civilian employees under Army Regulations 1444, 1445, 1447, and 1450. (Decision Sec. War, Jan. 31, 1896—Circular No. 2, 1896.)

<sup>2</sup> Sections 1179, 1180, and 1181, Revised Statutes, were repealed by the act of March 1, 1887 (24 Stat. L., 435), creating the Hospital Corps.

#### THE HOSPITAL CORPS.

All hospital services in garrison and in the field will be performed by members of the Hospital Corps, who will be enlisted for, and permanently attached to, the Medical Department. In time of war, the corps will perform the necessary ambulance service under such officers of the Medical Department and assistants as may be detailed for that duty. (Par. 1396, A. R., 1895.)

No person will be appointed a hospital steward until he has served a year as acting hospital steward; nor will a steward be appointed nor an acting steward be detailed until he has passed a satisfactory examination, under the direction of the Surgeon-General. Privates who have served one year in the Hospital Corps, and graduates of pharmacy who have served six months and have shown particular fitness, may be recommended to the Surgeon-General for promotion by the senior medical officer of the command. From those thus recommended acting stewards will be detailed, after passing the required examination. These examinations will be conducted by a board composed of the medical officers of the station at which the applicant may be serving, and if no medical officer is there on duty, the candidate will be sent for examination to the nearest station provided with such an officer. The report of the board will be forwarded direct to the Surgeon-General. (Par. 1397, *ibid.*)

A hospital steward may be reenlisted at the expiration of his term of service on the authority of the Surgeon-General, provided he has passed successfully the prescribed examination. If he desire to reenlist he will report the fact, in writing, through military channels, to the Surgeon-General sixty days before the expiration of his term of service. (Par. 1398, *ibid.*)

At every post there will be one hospital steward, two if the garrison equals six companies, and an additional one for every additional six companies. At every

**674.** That the Secretary of War is empowered to appoint as many hospital stewards as, in his judgment, the service may require; but not more than one hospital steward shall be stationed at any post or place without special authority of the Secretary of War. That there shall be no appointments of hospital stewards until the number of hospital stewards shall be reduced below one hundred, and thereafter the number of such officers shall not exceed one hundred. *Act of March 16, 1896 (29 Stat. L., 61).*

Hospital stewards.  
Sec. 2, Mar. 1, 1887, v. 24, p. 435;  
Mar. 16, 1896, v. 29, p. 61.

**675.** That the pay of hospital stewards shall be forty-five dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men. They shall have rank with ordnance-sergeants and be entitled to all the allowances appertaining to that grade. *Sec 3, act of March 1, 1887 (24 Stat. L., 435).*

Rank and pay.  
Sec. 3, Mar. 1, 1887, v. 24, p. 435.

**676.** That no person shall be appointed a hospital steward unless he shall have passed a satisfactory examination before a board of one or more medical officers as to his qualifications for the position, and demonstrated his fitness therefor by service of not less than twelve months as acting hospital steward; and no person shall be designated for such examination except by written authority of the Surgeon-General. *Sec. 4, ibid.*

Examination.  
Sec. 4, Mar. 1, 1887, v. 24, p. 435.  
Sec. 4, *ibid.*

**677.** That the Secretary of War is empowered to enlist, or cause to be enlisted, as many privates of the Hospital Corps as the service may require, and to limit or fix the number, and make such regulations for their government

Privates; duties.  
Sec. 5, *ibid.*

post of two companies there will also be an acting steward, if practicable. (Par. 1409, *ibid.*)

There will be three privates of the Hospital Corps at every military post, four if the garrison consists of two companies, and an additional private for each additional two companies. They will be assigned to the respective duties connected with the hospital service by the surgeon of the post. (Par. 1410, *ibid.*)

The number of stewards and privates of the Hospital Corps to be stationed at arsenals, engineer stations, and independent posts will be determined by the Secretary of War. (Par. 1411, *ibid.*)

#### COMPANY BEARERS.

There will be in each company four privates designated for instruction as litter bearers. They will be selected by company commanders, with the concurrence of the surgeon. They should be of good character and sufficient intelligence to make them eligible for transfer to the corps, and will be known as "company bearers." (Par. 1412, A. R., 1895.)

Company bearers, together with all available men of the Hospital Corps, will be instructed under the supervision of the surgeon of the post for at least four hours in each month, and at such times as the post commander may appoint, in the duties of litter bearers and the methods of rendering first aid to the sick and wounded. This special instruction will not relieve them from the performance of their regular military duties. They should be instructed primarily, and by object lessons as far as practicable, in first aid. During an engagement or in an emergency the company bearers may be directed by their immediate commanding officers to fall out and give first aid to the wounded, or carry them to the rear until relieved by members of the Hospital Corps, and when so relieved they will immediately join their companies. Company bearers on drill as such and in campaigns will wear a red brassard around the left arm. (Par. 1413, *ibid.*)

#### AMBULANCES AND LITTERS.

One regulation ambulance with proper harness will be issued to each post. To posts of more than 200 men, the number to be issued will be one additional ambulance for each additional 200 men or major fraction thereof. (Par. 1414, A. R., 1895.)

The ambulance will not be used except for transportation of the sick and wounded,

as may be necessary; and any enlisted man in the Army shall be eligible for transfer to the Hospital Corps as a private. They shall perform duty as wardmasters, cooks, nurses, and attendants in hospitals, and as stretcher-bearers, litter-bearers, and ambulance attendants in the field, and such other duties as may by proper authority be required of them. *Sec. 5, ibid.*

Pay and allowances.  
*Sec. 6, ibid.;*  
*July 13, 1892, v.*  
*27, p. 120.*

678. That the pay of privates of the Hospital Corps shall be eighteen dollars per month, with the increase on account of length of service as is now or may hereafter be allowed by law to other enlisted men; they shall be entitled to the same allowances as a corporal of the arm of service with which on duty. *Sec. 6, ibid.*

Acting hospital stewards.  
*Sec. 7, Mar. 1,*  
*1887, v. 24, p. 436.*

679. That privates of the Hospital Corps may be detailed as acting hospital stewards by the Secretary of War, upon the recommendation of the Surgeon-General, whenever the necessities of the service require it; and while so detailed their pay shall be twenty-five dollars per month, with increase as above stated. Acting hospital stewards, when

the recreation of convalescent patients, or to give instruction in the duties of the ambulance service. They will be furnished and repaired by the Quartermaster's Department, will always be subject to the call of the surgeon, and, when practicable, will be housed near the hospital. (Par. 1415, *ibid.*)

At each post one of the privates of the corps will be designated by the surgeon as ambulance driver. In addition to his other duties, he will care for the ambulance, its equipment and harness, and see that they are always in readiness for immediate use. In the field he will care for the animals. When it is necessary to use the ambulance for any transportation purposes, the commanding officer, on the application of the surgeon, will see that the requisite animals are provided by the quartermaster and placed at the disposal of the surgeon. (Par. 1416, *ibid.*)

At posts each company will be furnished with one hand litter, which will be kept ready at all times for use by the company bearers. They will be supplied and repaired by the Quartermaster's Department. (Par. 1417, *ibid.*)

Travois and mule litters may be issued upon the recommendation of the chief surgeon. (Par. 1418, *ibid.*)

Commanding officers will inspect ambulances, litters, and other appliances for transporting the wounded at each monthly inspection, and see that they are completely equipped. When practicable, the ambulance fully equipped for service will be presented for inspection, with the animals attached. (Par. 1419, *ibid.*)

#### FIELD SERVICE.

In field service, troops will be accompanied by such number of men of the Hospital Corps as may be determined by the post commander, on the recommendation of the surgeon. (Par. 1420, A. R., 1895.)

On the march or in battle each medical officer will habitually be attended by a mounted private of the Hospital Corps. Hospital stewards, acting stewards, and at least one private of the corps in each separate command will be mounted when serving in the field, and all privates of the corps will be mounted when serving with mounted commands. Horses will be furnished by the Quartermaster's Department for members of the corps on duty in the field, when practicable. When no horses are available special application for authority to hire must be made. (Par. 1421, *ibid.*)

Ambulances will be used for the transportation of the sick and wounded, the instruction of the Hospital Corps and company bearers, and, in urgent cases, for the transportation of medical supplies, and all persons are prohibited from using them, or requiring or permitting them to be used, for any other purpose. It shall be the duty of the officers of the ambulance service to report to the commander of the troops any violation of the provisions of this paragraph. (Par. 1422, *ibid.*)

No person, except the proper medical officers or the officers, noncommissioned officers, and privates of the ambulance service, or such persons as may be specially assigned by competent military authority to duty therewith, will be permitted to take or accompany sick or wounded men to the rear, either on the march or upon the field of battle. (Par. 1423, *ibid.*)

When detailed for service in the field during Indian wars, or when left with the sick or wounded under circumstances which justify the expectation that their rights as noncombatants, under the Geneva Convention, will not be recognized, commanding officers will issue to members of the Hospital Corps revolvers or other available firearms. With these exceptions, no side arms will be issued to members of the Hospital Corps. (Order Sec. War, Jan. 31, 1896—Circular No. 2, 1896.)

educated in the duties of the position, may be eligible for examination for appointment as hospital stewards as above provided. *Sec. 7, ibid.*

## ARTIFICIAL LIMBS.

Par.	Par.
680. Artificial limbs.	688. Trusses.
681. To be renewed once in three years.	689. Application for; how made.
682. Commutation.	690. Trusses to be purchased by Surgeon-General.
683. Commutation payable by Commissioner of Pensions.	691. Hospital matrons and female nurses.
684. Commutation to those who can not use artificial limbs.	692. Quarters for hospital stewards.
685. Commutation to be paid directly to soldier, etc.	693. Civilian employees may purchase medicines.
686. Transportation to persons for whom artificial limbs are furnished.	694. Purchases without advertisement.
687. Transportation to be furnished by Quartermaster-General.	

**680.** That every officer, soldier, seaman and marine, who, in the line of duty, in the military or naval service of the United States, shall have lost a limb, or sustained bodily injuries, depriving him of the use of any of his limbs, shall receive once every three years an artificial limb or appliance, or commutation therefor, as provided and limited by existing laws, under such regulations as the Surgeon-General of the Army may prescribe; and the period of [five] three years shall be held to commence with the filing of the first application after the seventeenth day of June, in the year eighteen hundred and seventy. *Sec. 1, act of August 15, 1876 (19 Stat. L., 203).* The \* \* \* sums \* \* \* hereby appropriated shall be expended and disbursed under the direction of the Surgeon-General of the Army, and in accordance with existing laws. *Act of March 23, 1876 (19 Stat. L., 8).*

Artificial limbs.  
Mar. 23, 1876, v.  
19, p. 8; Aug. 15,  
1876, s. 1, v. 19, p.  
203; Mar. 3, 1891,  
v. 26, p. 1103.

Appropriation  
to be disbursed  
by Surgeon-Gen-  
eral.

**681.** Every officer, soldier, seaman, and marine who was disabled during the war for the suppression of the rebellion, in the military or naval service, and in the line of duty, or in consequence of wounds received or disease contracted therein, and who was furnished by the War Department since the seventeenth day of June, eighteen hundred and seventy, with an artificial limb or apparatus for resection, who was entitled to receive such limb or apparatus since said date, shall be entitled to receive a new limb or apparatus at the expiration of every three years thereafter, under such regulations as have been or may be prescribed

To be renewed  
once in three  
years.  
July 2, 1868, v.  
15, s. 14, p. 237;  
June 17, 1890, v.  
16, s. 1, p. 153;  
June 30, 1870, v.  
16, p. 175; Mar.  
23, 1876, v. 19, p.  
8; Feb. 27, 1877,  
v. 19, p. 252; Mar.  
3, 1891, v. 26, p.  
1103.  
*Sec. 4787, R.S.*



by the Surgeon-General of the Army.<sup>1</sup> *Act of March 3, 1891*  
(26 Stat. L., 1103).

Commutation  
rates for limb,  
etc.

June 17, 1870,  
c. 132, s. 1, v. 16,  
p. 153; Aug. 15,  
1876, c. 300, v. 19,  
p. 203.

Sec. 4788, R.S.

**682.** Every person entitled to the benefits of the preceding section may, if he so elects, receive, instead of such limb or apparatus, the money value thereof, at the following rates, namely: For artificial legs, seventy-five dollars; for arms, fifty dollars; for feet, fifty dollars; for apparatus for resection, fifty dollars.

Commutation  
to those who can  
not use artificial  
limb.

*Ibid.*, s. 3.  
Feb. 27, 1877, c.  
69, v. 19, p. 252.

Sec. 4790, R.S.

**683.** Every person in the military or naval service who lost a limb during the war of the rebellion, or is entitled to the benefits of section forty-seven hundred and eighty-seven, but from the nature of his injury is not able to use an artificial limb, shall be entitled to the benefits of section forty-seven hundred and eighty-eight, and shall receive money commutation as therein provided.

Commutation  
to be paid di-  
rectly to soldier,  
etc. No fee to  
agent.

Mar. 3, 1891, v.  
26, p. 979.

**684.** Hereafter in case of commutation the money shall be paid directly to the soldier, sailor, or marine, and no fee or compensation shall be allowed or paid to any agent or attorney.<sup>2</sup> *Act of March 3, 1891* (26 Stat. L., 979).

Transportation  
for persons to  
whom artificial  
limbs are fur-  
nished.

July 28, 1866, c.  
305, v. 14, p. 342;  
Mar. 23, 1876, c. 30,  
v. 19, p. 8; Aug.  
15, 1876, c. 300, s. 2,  
v. 19, p. 204; Feb.  
27, 1877, c. 69, v. 19, p. 252.

**685.** The Secretary of War is authorized and directed to furnish to the persons embraced by the provisions of section forty-seven hundred and eighty-seven, transportation to and from their homes and the place where they may be required to go to obtain artificial limbs provided for them under authority of law.

Transportation  
furnished by  
Quartermaster-  
General.

Sec. 2, Aug. 15,  
1876, v. 19, p. 204;  
Feb. 27, 1877, v.  
19, p. 252; Mar. 3,  
1891, v. 26, p. 1103.

**686.** The transportation allowed for having artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded from the appropriations for the purchase of artificial limbs.

Transportation  
to be furnished  
by Quartermas-  
ter-General.

Sec. 2, Aug. 15,  
1876, v. 19, p. 204.  
1874, ch. 298, 18  
Stat. L., 78.

Sec. 4791, R.S.

**687.** That necessary transportation to have artificial limbs fitted shall be furnished by the Quartermaster-General of the Army, the cost of which shall be refunded out of any money appropriated for the purchase of artificial limbs: *Provided*, That this act shall not be subject to the provisions of an act entitled "an act to increase pensions," approved June eighteenth, eighteen hundred and seventy-four. *Sec. 2, act of August 15, 1876* (19 Stat. L., 204).

#### TRUSSES.

Trusses for sol-  
diers and sailors.

Mar. 3, 1879, v.  
20, p. 353.

Sec. 1176, R.S.

**688.** That every soldier of the Union Army, or petty-officer, seaman, or marine in the naval service, who was ruptured while in the line of duty during the late war for

<sup>1</sup> The clause added to section 4787 by the act of February 27, 1877, was repealed by the act of March 3, 1891.

<sup>2</sup> I. The requirement of section 4789, Revised Statutes, that the Commissioner of Pensions shall be furnished by the Surgeon-General with lists of beneficiaries with a view to their payment, was superseded by the act of August 15, 1876 (19 Stat. L., 244), requiring payments on account of artificial limbs, etc., to be made by the latter officer.

the suppression of the rebellion, or who shall be so ruptured thereafter in any war, shall be entitled to receive a single or double truss of such style as may be designated by the Surgeon-General of the United States Army as best suited for such disability; and whenever the said truss or trusses so furnished shall become useless from wear, destruction, or loss, such soldier, petty-officer, seaman, or marine shall be supplied with another truss on making a like application as provided for in section two of the original act of which this is an amendment: *Provided*, That such application shall not be made more than once in two years and six months: *And provided further*, That sections two and three of the said act of May twenty-eighth, eighteen hundred and seventy-two, shall be construed so as to apply to petty-officers, seamen, and marines of the naval service, as well as to soldiers of the Army.

*Proviso.*

**689.** Application for such truss shall be made by the ruptured soldier, to an examining surgeon for pensions, whose duty it shall be to examine the applicant, and when found to have a rupture or hernia, to prepare and forward to the Surgeon-General an application for such truss without charge to the soldier.

Application for; how made.  
May 28, 1872, c. 228, s. 2, v. 17, p. 164.  
Sec. 1177, R. S.

**690.** The Surgeon-General is authorized and directed to purchase the trusses required for such soldiers, at wholesale prices, and the cost of the same shall be paid upon the requisition of the Surgeon-General out of any moneys in the Treasury not otherwise appropriated.

Trusses to be purchased by Surgeon-General.  
May 28, 1872, c. 228, s. 3, v. 17, p. 164.  
Sec. 1178, R. S.

### HOSPITALS.<sup>1</sup>

**691.** Hospital matrons in post or regimental hospitals shall receive ten dollars a month, and female nurses in general hospitals shall receive forty cents a day. One ration in kind or by commutation shall be allowed to each.

Hospital matrons and female nurses.  
Mar. 16, 1802, v. 2, p. 134; Aug. 3, 1861, v. 12, p. 288; July 4, 1864, v. 13, p. 416.

**692.** That hereafter the posts at which such quarters, [for hospital stewards], shall be constructed shall be designated by the Secretary of War, and such quarters shall be built by contract, after legal advertisement, whenever the same is practicable. *Act of February 27, 1893 (27 Stat L., 484).*

Sec. 1277, R. S.  
Quarters for hospital stewards.  
Feb 27, 1893, v. 27, p. 484.

### <sup>1</sup> HOSPITAL BUILDINGS.

A building will not be erected for nor occupied as a hospital until the opinion of a medical officer has been obtained in writing upon the suitableness of site and proposed arrangement. If the commanding officer dissent from this opinion he will return it to the surgeon of the post with his reasons indorsed thereon. (Par. 1424, A. R., 1895.)

Hospitals will be erected at permanent posts in accordance with plans and specifications furnished by the Surgeon-General, approved by the Secretary of War. (Par. 1425, *ibid.*)

When alterations of or additions to hospitals are necessary, the surgeon of the

## SALES TO CIVILIAN EMPLOYEES.

Civilian employees may purchase medicines. Mar. 3, 1883, v. 22, p. 459.

**693.** That civilian employees of the Army stationed at military posts may, under regulations to be made by the Secretary of War, purchase necessary medical supplies,

post, after obtaining from the quartermaster an estimate of cost, will transmit plans and specifications, with proposed modifications, through military channels, to the Secretary of War. Similar action will be taken upon quarters for hospital stewards. (Par. 1426, *ibid.*)

No portion of any hospital building will be used or occupied as quarters, nor will any mess be permitted or maintained therein except such as may be necessary for patients and enlisted men there on duty. (Par. 1430, *ibid.*)

## SICK CALL.

At sick call the enlisted men of each company who require medical attention will be conducted to the hospital by a noncommissioned officer, who will give to the attending surgeon the Company Sick Report Book containing the names of the sick. The surgeon, after examination, will indicate in the book, opposite their names, the men who are to be admitted to hospital and those to be returned to quarters, what duties the latter can perform, with any other information in regard to the sick which he may have to communicate to the company commander. (Par. 1431, A. R., 1895.)

Medical officers will furnish company commanders any information, except the diagnosis, which will assist them in determining, for entry on the muster rolls, whether or not the disability of a soldier who is or has been on sick report originated in the line of duty, entering this information in the Company Sick Report Book. When required they will furnish the diagnosis to the commanding officer. (Par. 1432, *ibid.*)

## GENERAL HOSPITALS.

General hospitals will be under the exclusive control of the Surgeon-General and will be governed by such regulations as the Secretary of War may prescribe. The surgeon in charge will command the same and will not be subject to the orders of local commanders other than those of territorial departments. (Par. 1433, A. R., 1895.)

Hospital transports, boats, and railway trains, after being properly assigned as such, will be exclusively under the control of the Medical Department, and will not be diverted from their special purposes by orders of local or department commanders or officers of other staff corps. (Par. 1434, *ibid.*)

## SERVICE OF HOSPITALS.

The senior surgeon is charged with the management and is responsible for the condition of the post hospital, which will be at all times subject to inspection by the commanding officer. The surgeon of the post will inspect the hospital every morning, and on Saturday will also inspect the detachment of the Hospital Corps. (Par. 1435, A. R., 1895.)

The surgeon of the post will assign his assistants and the members of the Hospital Corps to duty, and report them on the muster rolls in the capacity in which they are serving. With the approval of the commanding officer, he will also appoint the matrons. (Par. 1436, *ibid.*)

Hospital matrons will be allowed as follows: At general hospitals, one matron to twenty patients or major fraction thereof; at hospitals at posts and arsenals, a number fixed by the Surgeon-General. (Par. 1437, *ibid.*)

Patients will, if possible, leave their arms and accouterments with their companies. In no event shall ammunition be taken into the hospital. (Par. 1438, *ibid.*)

When a soldier in hospital is detached from his company, his company commander will send to the hospital his descriptive list. The surgeon in charge will enter thereon all payments, stoppages, and the money value of all clothing issued, and when the soldier leaves the hospital will return the list to the company commander. If the soldier is discharged from the service while in hospital, the surgeon will furnish him with final statements and notify the Adjutant-General of the Army and the company commander of the date, place, and cause of discharge. If the soldier die in hospital, the surgeon will take charge of his effects and make the reports required in paragraph 158. (Par. 1439, *ibid.*)

Sick or wounded soldiers, discharged while in the hospital, will be entitled to medical treatment in hospital, and to the usual ration during disability, or for the period considered proper for them to remain under treatment, but a discharged soldier who has left the hospital will not be readmitted except upon the written order of the commanding officer. (Par. 1440, *ibid.*)

Tents, clothing, hospital furniture, and other stores used in the treatment of contagious diseases, will be disinfected or burned under the supervision of a medical officer. (Par. 1441, *ibid.*)

The Secretary of War may, on the recommendation of the Surgeon-General, order gratuitous issues of clothing to soldiers who have had contagious diseases, and to hospital attendants who have nursed them, to replace articles destroyed by order of the proper medical officer to prevent contagion. (Par. 1442, *ibid.*)

Medical officers in charge of hospital property will not permit it to be used for other than hospital purposes. (Par. 1443, *ibid.*)

Under the act of March 2, 1889 (25 Stat. L., 831), the annual appropriations for the "Construction and repair of hospitals" are available for expenditure upon the Army and Navy Hospital at Hot Springs, Ark. (3 Dig. Compt. Dec., 33.)

Where Congress has made a specific appropriation, to be expended under the direc-

prescribed by a medical officer of the Army, at cost, with ten per centum added.<sup>1</sup> *Act of March 3, 1883 (22 Stat L., 459).*

#### PURCHASES OF MEDICAL SUPPLIES.

694. That hereafter so much of section thirty-seven hundred and nine, Revised Statutes, as requires advertisement before purchase shall not apply to the purchase of medicines and medical supplies.<sup>2</sup> *Act of February 27, 1893 (27 Stat. L., 485).*

Purchases without advertisement. Feb. 27, 1893, v. 27, p. 485.

tion of the Secretary of War, for "the erection of the necessary and suitable buildings" at a military post, the appropriation is available for the erection of a suitable hospital building if, in the judgment of the Secretary of War, such a building is necessary at that post. Where Congress has made provision for the construction of buildings at and the enlargement of such buildings as, "in the judgment of the Secretary of War, may be necessary," the appropriation for that purpose may be used, at the discretion of the Secretary of War, in continuing building operations at the particular military post not specially provided for. (3 Ibid. 217.)

<sup>1</sup>Civilian employees at military posts may purchase the medical supplies prescribed for them by a medical officer, at cost price, with 10 per cent added. Medical officers who dispense medical supplies to civilian employees will render direct to the Surgeon-General, on the first day of every month, detailed accounts in duplicate, giving the name of each employee, the kind and quantity of medical supplies furnished him, and by whom prescribed, during the preceding month, leaving a space between items for the insertion of the price, which will be fixed at the Surgeon-General's Office. One copy will be returned to the officer furnishing the supplies, and the amounts inserted will be collected by the officer accountable for them, and be disposed of in the same manner as proceeds of other sales of medical property. At isolated posts where issues to civilians become necessary to save life or prevent extreme suffering, medical officers will make such issues, and at the end of each month report the circumstances to the Surgeon-General. Original prescriptions will be retained as a part of the hospital records, and will be subject to examination at all times by inspectors and post commanders. (Par. 1444, A. R., 1895.)

<sup>2</sup>For general provisions in respect to the procurement of supplies see the chapter entitled CONTRACTS AND PURCHASES. For special authority to sell unserviceable medical and hospital stores and other property, except liquors, see the act of August 6, 1894 (28 Stat L., 241).

The employment of civilians in the Medical Department is regulated by the annual acts of appropriation. The amount available for that purpose was fixed in the act of March 3, 1883, at \$34,000; in those of July 5, 1884, March 3, 1885, June 30, 1886, and February 9, 1887, at \$36,000; in that of September 22, 1888, at \$42,000; in those of March 2, 1889, June 13, 1890, February 24, 1891, and July 16, 1892, at \$45,000; in those of February 27, 1893, August 6, 1894, February 12, 1895, and March 16, 1896, at \$40,000.

# CHAPTER XXI.

## THE ENGINEER DEPARTMENT.

### THE CORPS OF ENGINEERS.

Par.		Par.	
695.	The Corps of Engineers; organization.	707.	Mileage of engineer officers on land-grant roads, etc.
696.	Disbursements.	708.	Employment of civil engineers.
697.	Engineers; limits of duty.	709.	Names to be reported to Congress.
698.	Examinations for promotion.	710.	Draftsmen, etc., in office of Chief of Engineers.
699.	Promotion of lieutenants after fourteen years' service.	711.	Chief of Engineers may use books in Library of Congress.
700.	Examination of engineer or ordnance officers who have served during the rebellion.	712.	Secretary of War to furnish annual estimates for river and harbor works on or before October 1.
701.	Engineer battalion.	713.	Annual report of Chief of Engineers.
702.	Engineer company.		
703.	Officers of battalion.		
704.	Duties of engineer soldiers.		
705.	Chief Engineer to determine form, number, etc., of pontoons, tools, etc.		
706.	Details for signal duty.		

The Corps of Engineers.

July 28, 1866, c. 293, s. 19, v. 14, p. 335; Mar. 3, 1869, c. 124, s. 6, v. 15, p. 318; June 10, 1872, c. 426, v. 17, p. 382.

Sec. 1151, R. S. Disbursements. July 5, 1838, c. 162, s. 27, v. 5, p. 260; July 7, 1838, c. 194, v. 5, p. 308. Sec. 1153, R. S.

**695.** The Corps of Engineers shall consist of one Chief of Engineers, with the rank of brigadier-general, six colonels, twelve lieutenant-colonels, twenty-four majors, thirty captains, twenty-six first lieutenants, and ten second lieutenants, and the battalion.<sup>1</sup>

**696.** It shall be the duty of the engineer superintending the construction of a fortification, or engaged about the execution of any other public work, to disburse the moneys applicable to the same; but no compensation shall be allowed him for such disbursement.<sup>2</sup>

<sup>1</sup> The act of June 10, 1872, prohibiting promotions above the grade of colonel in the Engineer Corps was repealed by the act of June 30, 1879 (21 Stat. L., 45).

The duties of the Corps of Engineers comprise reconnoitering and surveying for military purposes; selection of sites and formation of plans and estimates for military defenses; construction and repair of fortifications and their accessories; planning and superintending of defensive or offensive works of troops in the field; examination of routes of communications for supplies, and for military movements and construction of military roads and bridges; execution of river and harbor improvements assigned to it, and such other duties as the President may order. It collects, arranges, and preserves all correspondence, reports, memoirs, estimates, plans, drawings, deeds, and titles relating to the Washington Aqueduct and public buildings and grounds in the District of Columbia, and models which concern or relate in any wise to the several duties above enumerated. (Par. 1472, A. R., 1890.)

<sup>2</sup> See, also, note 1 to paragraph 792, *post*.

697. Engineers shall not assume nor be ordered on any duty beyond the line of their immediate profession, except by the special order of the President. They may, at the discretion of the President, be transferred from one corps to another, regard being paid to rank.

Engineers;  
limits of duty.  
Apr. 10, 1806, c.  
20, art. 63, v. 2, p.  
367.  
Sec. 1158, R. S.

#### EXAMINATIONS FOR PROMOTION.

698. No officer of the Corps of Engineers below the rank of field-officer shall be promoted to a higher grade, until he shall have been examined and approved by a board of three engineers, senior to him in rank. If an engineer officer fail on such examination he shall be suspended from promotion for one year, when he shall be re-examined before a like board. In case of failure on such re-examination, he shall be dismissed from the service.<sup>1</sup>

Examinations  
for promotion.  
Mar. 3, 1863, c.  
78, s. 3, v. 12, p.  
743.  
Sec. 1206, R. S.

699. When any lieutenant of the Corps of Engineers [or Ordnance Corps] has served fourteen years' continuous service as lieutenant, he shall be promoted to the rank of captain on passing the examination provided by the preceding section, but such promotion shall not authorize an appointment to fill any vacancy, when such appointment would increase the whole number of officers in the corps beyond the number fixed by law; nor shall any officer be promoted before officers of the same grade who rank him in his corps.

Promotion of  
lieutenants after  
fourteen years'  
service.  
Mar. 3, 1853, c.  
98, s. 9, v. 10, p.  
219; Mar. 3, 1863,  
c. 78, ss. 3, 4, v. 12,  
p. 743; Feb. 27,  
1877, c. 69, v. 19, p.  
245.  
Sec. 1207, R. S.

700. That the examination of officers of the Corps of Engineers and Ordnance Department who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the war of the rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps and department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers and Ordnance Department, respectively. *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

Examination  
of engineer or  
ordnance officers  
who served dur-  
ing the rebellion.  
Subjects.  
Sec. 2, July 27,  
1892, v. 27, p. 276.

#### THE BATTALION OF ENGINEERS.

701. The battalion of engineers shall consist of the five companies of engineers now existing, one sergeant-major, and one quartermaster-sergeant, who shall also be commissary-sergeant.

Engineer bat-  
talion.  
July 28, 1866, c.  
299, s. 20, v. 14,  
p. 335; June 30,  
1864, c. 145, s. 4, v.  
13, p. 144; Aug. 3,  
1861, c. 42, s. 4, v.  
12, p. 287; Aug.  
6, 1861, c. 57, s. 2,  
v. 12, p. 318; May  
15, 1846, c. 21, s. 1,  
v. 9, p. 12.  
Sec. 1154, R. S.

<sup>1</sup>Promotions to the grade of colonel in this Department are made by seniority, subject to the examinations required by section 1206, Revised Statutes, and the acts of October 1, 1890 (26 Stat. L., 562), and July 27, 1892 (27 Stat. L., 276). For general provisions respecting appointments and promotions see the chapter entitled THE STAFF DEPARTMENTS.

Engineer company.

Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; July 15, 1870, c. 294, s. 2, v. 16, p. 317.

Sec. 1155, R. S.

**702.** Each company of engineer soldiers shall consist of ten sergeants, ten corporals, two musicians, and as many privates of the first class, not exceeding sixty-four, and as many privates of the second class, not exceeding sixty-four, as the President may direct, and shall be recruited in the same manner, and with the same limitation, and shall be entitled to the same provisions, allowances, and benefits, in every respect, as are allowed to other troops constituting the present military peace establishment.

Officers of battalion.

July 28, 1866, c. 299, s. 29, v. 14, p. 335; May 15, 1846, c. 21, s. 4, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317.

**703.** A battalion-adjutant, a battalion-quartermaster, and appropriate officers to command the companies and battalion of engineer soldiers, shall be detailed from the Corps of Engineers.

Duties of engineer soldiers.

May 15, 1846, c. 21, s. 4, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317; Mar. 3, 1863, c. 78, s. 1, v. 12, p. 743.

Sec. 1157, R. S.

**704.** The enlisted men of the engineer battalion shall be instructed in and perform the duties of sappers, miners, and pontoniers, and shall aid in giving practical instruction in those branches at the Military Academy. They may be detailed by the Chief of Engineers to oversee and aid laborers upon fortifications and other works in charge of the Engineer Corps, and, as fort keepers, to protect and repair finished fortifications.

Chief Engineer to determine form, number, etc., of pontoons, tools, etc.

May 15, 1846, c. 21, s. 5, v. 9, p. 13; Aug. 3, 1861, c. 42, s. 4, v. 12, p. 287; Aug. 6, 1861, c. 57, s. 2, v. 12, p. 317; July 28, 1866, c. 299, s. 20, v. 14, p. 335.

**705.** The Chief of Engineers is authorized, with the approval of the Secretary of War, to regulate and determine the number, quality, form, and dimensions of the necessary vehicles, pontoons, tools, implements, arms, and other supplies for the use of the battalion of engineer soldiers.

Details for signal-duty.

July 28, 1866, c. 299, s. 22, v. 14, p. 335; July 24, 1876, c. 226, v. 19, p. 97.

Sec. 1196, R. S.

**706.** The Secretary of War may detail six officers from the Corps of Engineers, and any number of non-commissioned officers and privates not exceeding one hundred, from the battalion of engineers, for the performance of signal-duty; but no officer or enlisted man shall be so detailed until he shall have been examined and approved by a military board convened by the Secretary of War.<sup>1</sup>

#### MISCELLANEOUS PROVISIONS.

Mileage of engineer officers on land-grant roads, etc.

Sept. 16, 1890, s. 15, v. 26, p. 456.

**707.** That in determining the mileage of officers of the Corps of Engineers traveling without troops on duty connected with works under their charge, no deduction shall be made for such travel as may be necessary on free or

<sup>1</sup> Section 2 of the act of October 1, 1890 (26 Stat. L., 9, 653), provides that all duties pertaining to the Signal Service shall be performed by the officers and men of the Signal Corps created by that statute.

bond-aided or land-grant railways.<sup>1</sup> *Sec. 15, act of September 16, 1890 (26 Stat. L., 456).*

708. The Chief of Engineers may, with the approval of the Secretary of War, employ such civil engineers, not exceeding five in number, for the purpose of executing the surveys and improvements of western and northwestern rivers, ordered by Congress, as may be necessary to the proper and diligent prosecution of the same; and the persons so employed may be allowed a reasonable compensation for their services, not to exceed the sum of three thousand dollars a year.

Employment of civil engineers.  
Mar. 29, 1867, res. 27, v. 18, p. 28.  
Sec. 5253, R. S.

709. That the Secretary of War shall report to Congress, at its next and each succeeding session thereof, the name and place of residence of each civilian engineer employed in the work of improving rivers and harbors by means and as the result of appropriations made in this and succeeding river and harbor appropriation bills, the time so employed, the compensation paid, and the place at and work on which employed.<sup>2</sup> *Sec. 8, act of August 5, 1886 (24 Stat. L., 335).* See also paragraphs 79 and 80 ante.

Names to be reported to Congress, etc.  
Aug. 5, 1886, s. 8, v. 24, p. 335.

710. And the services of skilled draftsmen, civil engineers, and such other services as the Secretary of War may deem necessary, may be employed only in the office of the Chief of Engineers to carry into effect the various appropriations for rivers and harbors, fortifications, and surveys to be paid from such appropriations: *Provided, That* \* \* \* the Secretary of War shall each year, in the annual estimates, report to Congress the number of persons so employed and the amount paid to each.<sup>3</sup> *Act of May 28, 1896 (29 Stat. L., 163).*

Draftsmen, etc., in office of Chief of Engineers.  
May 28, 1896, v. 29, p. 163.

<sup>1</sup> The mileage allowance of officers of the Corps of Engineers when traveling on duty connected with river and harbor improvements, being an expense necessarily incidental to and incurred on account of such work, is properly payable from the appropriations therefor and not from the appropriation "Pay of the Army," at the special rates prescribed by army acts for mileage payable from said appropriation. 3 Dig. Compt. Dec., 207.

Officers of the Corps of Engineers, or those on engineer duty, traveling on service connected with fortifications or works of public improvement, will be paid their travel allowances from the special appropriations for the work. When traveling on any other duty, the mileage will be paid by that branch of the service intrusted with such payments for the Army. (Par. 1487, A. R., 1895.)

An Army officer traveling on a Government steamer, without incurring any personal expense for subsistence, is not entitled to the mileage at 4 cents per mile allowed by the act of August 6, 1894 (28 Stat. L., 237), said mileage being intended as a commutation of all expenses (excepting actual cost of transportation), when such expenses are incurred. 1 Compt. Dec., 122.

<sup>2</sup> Section 7 of the act of June 3, 1896 (29 Stat. L., 235), contains the provision that section 2 of the act of July 31, 1894 (28 Stat. L., 205), "shall not be so construed as to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment."

<sup>3</sup> The acts of August 5, 1882 (22 Stat. L., 240), and March 3, 1883 (22 Stat. L., 552), contained a similar provision, the amount in each case being fixed at \$75,000. For continuation of the same provision see the act of July 7, 1884 (23 Stat. L., 181) in which the amount appropriated was fixed at \$56,000; the acts of March 3, 1885 (23 Stat. L., 412), July 31, 1886 (24 Stat. L., 195), March 3, 1887 (24 Stat. L., 617), July 11,



Chief of Engineers may use books in Library of Congress.

Aug. 28, 1890, J. R. 41, v. 26, p. 678.

**711.** That the Joint Committee of Congress on the Library be authorized to extend the use of the books in the Library of Congress to the members and secretary of the Interstate Commerce Commission, and the Chief of Engineers of the Corps of Engineers United States Army, resident in Washington, on the same conditions and restrictions as Members of Congress are allowed to use the Library. *J. R., No. 41, August 28, 1890 (26 Stat. L., 678).*

Secretary of War to furnish annual estimates for river and harbor works on or before Oct. 1.

Mar. 3, 1893, v. 27, p. 603.

**712.** Hereafter the Secretary of War shall furnish to the Secretary of the Treasury, on or before the first day of October of each year, estimates of all appropriations required for river and harbor improvements for the next fiscal year to be included in the Book of Estimates prepared by law under his direction. *Act of March 3, 1893 (27 Stat. L., 603).*

Annual report of Chief of Engineers.

Sec. 8, Aug. 11, 1888, v. 25, p. 424.

**713.** That the Secretary of War shall cause the manuscript of the annual report of the Chief of Engineers and subordinate engineers, relating to the improvement of rivers and harbors, and the report of the Mississippi and Missouri River Commissions to be placed in the hands of the Public Printer on or before the fifteenth day of October in each year, and the Public Printer shall cause said reports to be printed with an accurate and comprehensive index thereof, on or before the first Monday in December in each year, for the use of Congress. *Sec. 8, act of August 11, 1888 (25 Stat. L., 424).*

#### THE PUBLIC BUILDINGS AND GROUNDS—THE LIGHT-HOUSE BOARD—THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

Par.

**714.** Chief of Engineers to have charge of public buildings and grounds.

**715.** Estimates and appropriations.

**716.** Employees on public buildings.

Par.

**717.** What trees, plants, etc., to be propagated.

**718.** Reports.

**719.** Annual statement of public property.

**720.** Extra pay prohibited.

Chief of Engineers to have charge of public buildings and grounds.

**714.** The Chief of Engineers shall have charge of the public buildings and grounds in the District of Columbia, under such regulations as may be prescribed by the Presi-

1888 (25 Stat. L., 280), February 26, 1889 (25 Stat. L., 730), July 11, 1890 (26 Stat. L., 252), March 3, 1891 (26 Stat. L., 932), July 16, 1892 (27 Stat. L., 208), and March 3, 1893 (27 Stat. L., 699), in which the amount appropriated was fixed at \$60,000; July 31, 1894 (28 Stat. L., 188), March 2, 1895 (28 Stat. L., 789), and May 28, 1896 (29 Stat. L., 163), in which the amount appropriated was fixed at \$72,000.

The cost of services and articles needed in the office of the Chief of Engineers is not properly chargeable to any appropriation for river and harbor improvements, or for fortifications, or to any other appropriation for the military establishment, unless expressly authorized by law. 3 Dig. Compt. Dec., 321.

dent through the War Department, except those buildings and grounds which are otherwise provided for by law.<sup>1</sup>

**715.** All estimates for public buildings and grounds in charge of the Chief of Engineers shall be approved and submitted by the Secretary of War, through the Treasury Department, as other estimates, to the two Houses of Congress; and all appropriations which have been or may be hereafter made for repairs or improvements of the public buildings and grounds in the District of Columbia, and now in charge of the Chief of Engineers, shall be expended under the direction of the Secretary of War. (*See par. 48 ante.*)

**716.** The Chief of Engineers in charge of public buildings and grounds is authorized to employ in his office and about the public buildings and grounds under his control such number of persons for such employments, and at such rates of compensation, as may be appropriated for by Congress from year to year.<sup>2</sup>

**717.** That hereafter only such trees, shrubs, and plants shall be propagated at the greenhouses and nursery as are suitable for planting in the public reservations, to which purpose only the said productions of the greenhouses and nursery shall be applied. *Act of June 20, 1878 (20 Stat. L., 220).*

**718.** The Chief of Engineers shall, as Superintendent of Public Buildings and Grounds, and as Superintendent of the Washington Aqueduct, annually submit the following reports to the Secretary of War in time to accompany the annual message of the President to Congress, namely:

First. A report of his operations for the preceding year, with an account of the manner in which all appropriations for public buildings and grounds have been applied, including a statement of the number of public lots sold, or remaining unsold each year, of the condition of the public buildings and grounds, and of the measures necessary to be taken for the care and preservation of all public property under his charge.

<sup>1</sup>The act of August 14, 1876, transferred the duties relating to the care and superintendence of the Capitol building to the Architect of the Capitol, by the following provision: "That the Architect of the Capitol shall have the care and superintendence of the Capitol, including lighting, and shall submit through the Secretary of the Interior, estimates thereof: *And provided further,* That all the duties relative to the Capitol building heretofore performed by the Commissioner of Public Buildings and Grounds, shall hereafter be performed by the Architect of the Capitol, whose office shall be in the Capitol building." The act of March 3, 1877, contained the following provision on the same subject: "The Architect of the Capitol shall hereafter have the care and superintendence of the Capitol, including lighting, and shall submit through the Secretary of the Interior, annually, estimates thereof."

<sup>2</sup>The officer in charge of the public buildings and grounds shall have the rank, pay, and emolument of a colonel. *Act of March 3, 1873 (17 Stat. L., 535).*

Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; Mar. 2, 1867, c. 167, s. 2, v. 14, p. 466.

**Sec. 1797, R.S.**  
Estimates and appropriations.

Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573.

**Sec. 1798, R.S.**

Employees in office of public buildings.

Mar. 3, 1877, c. 113, s. 1, v. 16, p. 479; May 8, 1872, c. 140, s. 1, v. 17, p. 65; Jan. 20, 1874, c. 11, v. 18, p. 4.

**Sec. 1799, R.S.**

What trees, plants, etc., to be propagated.

June 20, 1878, v. 20, p. 220.

**Reports.**

Mar. 3, 1829, c. 51, s. 3, v. 4, p. 363; Aug. 4, 1854, c. 242, s. 15, v. 10, p. 573; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106.

**Sec. 1812, R.S.**

Second. A report of the condition, progress, repairs, casualties, and expenditures of the Washington Aqueduct and other public works under his charge.

Annual statement of public property.

June 4, 1872, c. 287, v. 17, p. 220.

Sec. 1832, R. S.

**719.** It shall be the duty of the officer or officers having in charge the property of the United States in and about the Capitol, the President's House, and the Botanical Garden, to furnish an annual statement to the Architect of the Capitol Extension, by the first day of December, setting forth the public property in all the buildings, rooms, and grounds under their charge, purchased during each year, and an account of the disposition of such property during the same period, whether by sale or otherwise.<sup>1</sup>

Extra pay prohibited.

July 12, 1870, c. 251, s. 4, v. 16, p. 250.

Sec. 1835, R. S.

**720.** No pay or compensation other than is fixed by this Title shall be allowed to any officer, employé, or laborer embraced within the provisions thereof.

#### THE LIGHT-HOUSE BOARD—THE ENGINEER COMMISSIONER OF THE DISTRICT OF COLUMBIA.

Par.

721. The Light-House Board.

722. Superintendents of construction of light-houses.

723. Light-house inspectors.

724. Engineer Commissioner, District of Columbia.

725. Duties.

726. Compensation.

Par.

727. May be selected from captains.

728. Assistants to Engineer Commissioner.

729. Three authorized.

730. Estimates.

731. Powers of Commissioners.

The Light-House Board.

Aug. 31, 1852, c. 112, s. 8, v. 10, p. 119.

Sec. 4653, R. S.

**721.** The President shall appoint two officers of the Navy, of high rank, two officers of the Corps of Engineers of the Army, and two civilians of high scientific attainments, whose services may be at the disposal of the President, together with an officer of the Navy and an officer of engineers of the Army, as secretaries, who shall constitute the Light-House Board.

Superintendents of construction, etc., of light-houses.

Mar. 3, 1831, c. 37, s. 9, v. 9, p. 629.

Sec. 4664, R. S.

**722.** The President shall cause to be detailed from the Engineer Corps of the Army, from time to time, such officers as may be necessary to superintend the construction and renovation of light-houses.

Light-house inspectors.

Aug. 31, 1852, s. 12, v. 10, p. 120.

Sec. 4671, R. S.

**723.** An officer of the Army or Navy shall be assigned to each district as a light-house inspector, subject to the orders of the Light-House Board; and shall receive for such service the same pay and emoluments that he would be entitled to by law for the performance of duty in the regular line of his profession, and no other, except the legal allowance per mile, when traveling under orders connected with his duties.

<sup>1</sup> See note to par. 714, supra.

## ENGINEER COMMISSIONER, DISTRICT OF COLUMBIA.

**724.** That the President of the United States shall detail an officer of the Engineer Corps of the Army of the United States, who shall, subject to the general supervision and direction of the said Board of Commissioners, have the control and charge of the work of repair and improvement of all streets, avenues, alleys, sewers, roads, and bridges of the District of Columbia; and he is hereby vested with all the power and authority of, and shall perform the duties heretofore devolved upon, the chief engineer of the board of public works. He shall take possession of, and preserve and keep, all the instruments pertaining to said office, and all the maps, charts, surveys, books, records, and papers relating to said District, or to any of the avenues, streets, alleys, public spaces, squares, lots and buildings thereon, sewers, or any of them, as are now in or belonging to the office of said engineer of the board of public works, and shall, in books provided for that purpose, keep and preserve the records now required to be kept, and such as may be required by regulations of said board. He may, with the advice and consent of said Board of Commissioners, appoint not more than two assistant engineers from civil life, who shall each receive a salary of one thousand eight hundred dollars per annum, and shall be subject to his direction and control. He shall receive no additional compensation for such services.<sup>1</sup> And he shall not be deemed by reason of anything in this act contained to hold a civil office under the laws of the United States. And no salary or compensation shall be paid to the surveyor of the District, or any of his subordinates, except such fees for special services as are allowed by law. And the offices of assistant surveyor and additional assistant surveyor of the District of Columbia are hereby abolished. *Sec. 3, act of June, 20 1874.*

Engineer Commissioner, District of Columbia. Assistant engineers. June 20, 1874, v. 18, p. 117.

Engineer not to receive additional compensation. Not to be deemed to hold a civil office. No salary to be paid to surveyor except, etc.

Office of assistant surveyors abolished.

**725.** That within twenty days after the approval of this act the President of the United States, by and with the advice and consent of the Senate, is hereby authorized to appoint two persons, who, with an officer of the Corps of Engineers of the United States Army, whose lineal rank shall be above that of captain, shall be Commissioners of the District of Columbia, and who, from and after July first, eighteen hundred and seventy-eight, shall exercise all the powers and authority now vested in the Commissioners of said District, except as are hereinafter limited or provided,

Commissioners. June 11, 1878, v. 20, p. 103.

<sup>1</sup> But see paragraph 726 *post* for compensation of Engineer Commissioner.

and shall be subject to all restrictions and limitations and duties which are now imposed upon said Commissioners. The Commissioner who shall be an officer detailed, from time to time, from the Corps of Engineers, by the President, for this duty, shall not be required to perform any other, nor shall he receive any other compensation than his regular pay and allowances as an officer of the Army.<sup>1</sup> The two persons appointed from civil life shall, at the time of their appointment, be citizens of the United States, and shall have been actual residents of the District of Columbia for three years next before their appointment, and have, during that period, claimed residence nowhere else, and one of said three Commissioners shall be chosen president of the Board of Commissioners at their first meeting, and annually and whenever a vacancy shall occur, thereafter; and said Commissioners shall each of them, before entering upon the discharge of his duties, take an oath or affirmation to support the Constitution of the United States, and to faithfully discharge the duties imposed upon him by law; and said Commissioners appointed from civil life shall each receive for his services a compensation at the rate of five thousand dollars per annum, and shall, before entering upon the duties of the office, each give bond in the sum of fifty thousand dollars, with surety as is required by existing law. The official term of said Commissioners appointed from civil life shall be three years, and until their successors are appointed and qualified; but the first appointment shall be one Commissioner for one year and one for two years, and at the expiration of their respective terms their successors shall be appointed for three years. Neither of said Commissioners, nor any officer whatsoever of the District of Columbia, shall be accepted as surety upon any bond required to be given to the District of Columbia; nor shall any contractor be accepted as surety for any officer or other contractor in said District. *Sec. 2, act of June 11, 1878 (20 Stat. L., 103).*

Salary.

Compensation  
of Engineer Com-  
missioner.  
Mar. 3, 1881, v.  
21, p. 460.

**726.** Hereafter the Engineer Commissioner shall be entitled to receive such compensation, in addition to his Army pay and allowances, as will make his compensation equal to five thousand dollars per annum, and a sum sufficient to pay said additional compensation is hereby appropriated.<sup>2</sup> *Act of March 3, 1881 (21 Stat. L., 460).*

<sup>1</sup> But see paragraph 726 *post* for compensation of Engineer Commissioner.

<sup>2</sup> The act of December 24, 1890 (26 Stat. L., 1113), contains the requirement that in the event of the absence or disability of the Engineer Commissioner the duties pertaining to his office shall be performed by the senior assistant detailed from the Corps of Engineers.

**727.** Hereafter such Engineer Commissioner may, in the discretion of the President of the United States, be detailed from among the captains or officers of higher grade having served at least fifteen years in the Corps of Engineers of the Army of the United States. *Joint resolution No. 7, December 24, 1890 (26 Stat. L., 1113).*

May be appointed from captains.  
J. R. No. 7, Dec. 24, 1890, v. 26, p. 1113.

**728.** The President of the United States may detail from the Engineer Corps of the Army not more than two officers, of rank subordinate to that of the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said Engineer Commissioner, in the discharge of the special duties imposed upon him by the provisions of this act.<sup>1</sup> *Sec. 5, act of June 11, 1878 (20 Stat. L., 107).*

Engineer Commissioner.  
June 11, 1878, v. 20, p. 107.

**729.** The President of the United States may detail from the Engineer Corps of the Army not more than three officers, juniors to the engineer officer belonging to the Board of Commissioners of said District, to act as assistants to said Engineer Commissioner in the discharge of the special duties imposed upon him by the provisions of this act.<sup>2</sup> *Act of August 7, 1894 (28 Stat. L., 246).*

Three authorized.  
Aug. 7, 1894, v. 28, p. 246.

**730.** The said Commissioners shall submit to the Secretary of the Treasury for the fiscal year ending June thirtieth, eighteen hundred and seventy-nine, and annually thereafter, for his examination and approval, a statement showing in detail the work proposed to be undertaken by them during the fiscal year next ensuing, and the estimated cost thereof; also the cost of constructing, repairing, and maintaining all bridges authorized by law across the Potomac River within the District of Columbia, and also all other streams in said District; the cost of maintaining all public institutions of charity, reformatories, and prisons belonging to or controlled wholly or in part by the District of Columbia, and which are now by law supported wholly or in part by the United States or District of Columbia; and also the expenses of the Washington Aqueduct and its appurtenances; and also an itemized statement and estimate of the amount necessary to defray the expenses of the government of the District of Columbia for the next fiscal year: *Provided*, That nothing herein contained shall be construed as transferring from the United States authorities any of the public works within the District of Columbia now in the control or supervision of said authorities. *Act of June 11, 1878 (20 Stat. L., 104).*

Estimates.  
June 11, 1878, v. 20, p. 104.

<sup>1</sup>Modified by act of August 7, 1894. See next paragraph.

<sup>2</sup>This statute replaces the provision contained in section 5, act of June 11, 1878 (20 Stat. L., 107), which authorized the detail of two officers of engineers, junior in rank to the Engineer Commissioner, as assistants to that officer.

Powers of District Commissioners. Limitation.  
June 10, 1879, v. 21, p. 9.

**731.** That the Commissioners of the District of Columbia shall have all the powers and be subject to all the duties and limitations provided in chapter eight of the Revised Statutes of the United States relating to the District of Columbia, excepting such powers and duties as belong to the Chief of Engineers:<sup>1</sup> *Provided*, That water-main taxes and water rents shall be uniform in said District. *Act of June 10, 1879 (21 Stat. L., 9).*

#### THE WASHINGTON AQUEDUCT.

Par.	Par.
732. Chief of Engineers to have charge of the Washington Aqueduct.	739. Chief of Engineers not to receive compensation.
733. Regulations to be prescribed by President.	740. Apartments, stationery, etc.
734. Appropriations; how expended.	741. Record of property to be kept.
735. Unauthorized opening of pipes; penalty.	742. Chief of Engineers to regulate water supply.
736. Willful breaking, etc.; penalty.	743. Right of appeal to Secretary of War from decision of Chief of Engineers.
737. Maliciously making water impure.	744. Use of water in public buildings.
738. Pipes for use in public buildings.	745. Diversion of water prohibited.

Chief of Engineers to have charge of Washington Aqueduct.

Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106; Mar. 2, 1867, c. 167, s. 2, v. 14, p. 466; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12. Sec. 1800, R. S.

Regulations may be prescribed by President.

May 2, 1828, c.

45, s. 4, v. 4, p. 266; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 25, 1860, c. 211, s. 1, v. 12, p. 106; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12. Sec. 1801, R. S.

Appropriations for aqueduct, etc.; how expended.

Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435; June 18, 1862, Res. No. 36, v. 12, p. 620; Mar. 30, 1867, c. 20, s. 3, v. 15, p. 12.

Sec. 1802, R. S.

**732.** The Chief of Engineers shall have the immediate superintendence of the Washington Aqueduct, together with all rights, appurtenances, and fixtures connected with the same, and belonging to the United States, and of all other public works and improvements in the District of Columbia in which the Government has an interest, and which are not otherwise specially provided for by law.<sup>2</sup>

**733.** He shall obey, in the discharge of the duties mentioned in the preceding section, such regulations, pursuant to law, as may be prescribed by the President, through the Department of War.

**734.** All moneys appropriated or hereafter appropriated for the Washington Aqueduct, and for the other public works in the District of Columbia, not otherwise expressly provided for by law, shall be expended under the direction of the Secretary of War.

<sup>1</sup> But see paragraph 726 *ante* for compensation of Engineer Commissioner.

<sup>2</sup> For powers and duties of the Commissioners of the District of Columbia in respect to the Washington Aqueduct, see paragraph 730, *ante*. See also the act of June 20, 1874 (18 Stat. L. 74), creating the District Commission.

**735.** No person, unless by consent of the Chief of Engineers in charge of the public buildings and works, shall tap or open the mains or pipes laid or hereafter to be laid by the United States, under a penalty of not less than fifty nor more than five hundred dollars.

Unauthorized opening of pipes; penalty.  
Mar. 3, 1859, c. 84, s. 5, v. 11, p. 436.  
Sec. 1803, R. S.

**736.** Every person who maliciously breaks, injures, defaces, or destroys any main or pipe, bend, branch, valve, hydrant, service pipe, or any other fixture used for the distribution of water throughout the streets and avenues, or for its introduction into the houses, tenements, or buildings of Washington and Georgetown, shall be punishable by imprisonment in the county jail for not more than two years.

Willful, etc., breaking, etc., of pipes; penalty.  
Mar. 3, 1859, c. 84, s. 5, v. 11, p. 436.  
Sec. 1804, R. S.

**737.** Every person who maliciously commits any act by reason of which the supply of water, or any part thereof, to the cities of Washington and Georgetown, becomes impure, filthy, or unfit for use, shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned at hard labor in the District of Columbia not more than three years nor less than one year.

Maliciously making water impure.  
Mar. 3, 1859, c. 84, s. 7, v. 11, p. 437.  
Sec. 1806, R. S.

**738.** No greater number of main pipes of the Washington Aqueduct shall be laid at the expense of the United States than are sufficient to furnish the public buildings, offices, and grounds with the necessary supply of water. The cost of any main pipe, for the supply of water to the inhabitants of Washington and Georgetown, must be paid by the District of Columbia, in the manner provided by law.

Pipes for use of public buildings.  
Mar. 3, 1859, c. 84, s. 6, v. 11, p. 436.  
Sec. 1805, R. S.

**739.** The Chief of Engineers shall receive no compensation, other than his regular pay as an officer of the Corps of Engineers, for the services required of him under the provisions of this Title.

Chief of Engineers not to receive compensation.  
Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.  
Sec. 1807, R. S.

**740.** He shall be furnished official apartments in one of the public buildings in the city of Washington, as may be directed by the President, and shall be supplied by the Government with the stationery, instruments, books, and furniture which may be required for the performance of his duties.

Apartments, stationery, etc.  
Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.  
Sec. 1808, R. S.

**741.** He shall keep in his office a complete record of all the lands and other property connected with or belonging to the Washington Aqueduct and other public works under his charge, together with accurate plans and surveys of the public grounds and reservations in the District of Columbia.<sup>1</sup>

Record of property to be kept.  
Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.  
Sec. 1809, R. S.

<sup>1</sup>For reports and estimates required of the Chief of Engineers in connection with the superintendence of the Washington Aqueduct, see paragraphs 48 and 718, *ante*.



Chief of Engineers to regulate water supply.

May 2, 1828, c. 45, s. 4, v. 4, p. 266; Mar. 3, 1859, c. 84, s. 1, v. 11, p. 435.

Sec. 1810, R. S.

**742.** He and his necessary assistants are empowered to use all lawful means for the discharge of their duties; and, particularly, he shall have full control over the Washington Aqueduct, to regulate the manner in which the authorities of the District of Columbia may tap the supply of water to the inhabitants thereof; and he shall stop the same whenever it is found to be no more than adequate to the wants of the public buildings and grounds.

Right of appeal to Secretary of War from decision of Chief of Engineers.

Mar. 3, 1859, c. 84,

**743.** His decision on all questions concerning the supply of water, as provided in the preceding section, shall be subject to appeal to the Secretary of War only.

s. 1, v. 11, p. 435. Sec. 1811, R. S.

Use of water in public buildings.

Mar. 3, 1883, v. 22, p. 615.

**744.** And all officers in charge of public buildings in the District of Columbia shall cause the flow of water in the buildings under their charge to be shut off from five o'clock post meridian to eight o'clock ante meridian: *Provided*, That the water in said public buildings is not necessarily in use for public business. *Act of March 3, 1883 (27 Stat. L., 615).*

Diversion of water prohibited.

Mar. 3, 1893, v. 27, p. 544.

**745.** That no portion of the water conveyed or to be conveyed through or by means of the Washington Aqueduct, or any appurtenance thereof, shall be diverted to the supply or use of any building, premises, or establishment located outside of the existing limits of the District of Columbia. *Act of March 3, 1893 (27 Stat. L., 544).*

Lands about reservoir.

Rock Creek Bridge.

Mar. 3, 1875, v. 18, p. 393.

**746.** That the lands belonging to the United States and lying around the receiving-reservoir shall hereafter be controlled in connection with the Washington Aqueduct, and shall be under the charge and control of the officer in charge of said aqueduct: *And provided further*, That the chief engineer is hereby directed to notify the Washington and Georgetown Railway Company to remove their railway track from the Washington aqueduct bridge over Rock Creek, within one year from the date of said notice; and said company shall make such removal within the year aforesaid, and have the right to lay their tracks along Twenty-sixth street from Pennsylvania avenue to M street north, and thence along M street into Georgetown, to connect with their tracks on Bridge street; and said chief engineer may establish and publish regulations prohibiting the passage of heavily loaded wagons and carriages over said bridge. *Act of March 3, 1875 (18 Stat. L., 393).*

THE MISSISSIPPI RIVER COMMISSION—THE MISSOURI  
RIVER COMMISSION—THE CALIFORNIA DÉBRIS COM-  
MISSION.

Par.	Par.
747-753. The Mississippi River Commission.	757. Regulations for navigation of South Pass.
754. Water gauges on the Mississippi River and its tributaries.	758. Snag boats, upper Mississippi River.
755. Piers and cribs on the Mississippi.	759-762. The Missouri River Commission.
756. Surveys at the South Pass.	763-791. The California Débris Commission.

THE MISSISSIPPI RIVER COMMISSION.

747. A Commission is hereby created, to be called "The Mississippi River Commission," to consist of seven members. *Act of June 28, 1879 (21 Stat. L., 37).*

Mississippi River Commission.

June 28, 1879, v. 21, p. 37.

Composition. Sec. 2, *ibid.*

748. The President of the United States shall, by and with the advice and consent of the Senate, appoint seven Commissioners, three of whom shall be selected from the Engineer Corps of the Army, one from the Coast and Geodetic Survey, and three from civil life, two of whom shall be civil engineers. And any vacancy which may occur in the Commission shall in like manner be filled by the President of the United States; and he shall designate one of the Commissioners appointed from the Engineer Corps of the Army to be president of the Commission. The Commissioners appointed from the Engineer Corps of the Army and the Coast and Geodetic Survey shall receive no other pay or compensation than is now allowed them by law, and the other three Commissioners shall receive as pay and compensation for their services each the sum of three thousand dollars per annum; and the Commissioners appointed under this act shall remain in office subject to removal by the President of the United States. *Sec. 2, ibid.*

749. It shall be the duty of said Commission to direct and complete such surveys of said river, between the Head of the Passes near its mouth to its headwaters, as may be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, of said river and its tributaries, as may be deemed necessary by said Commission to carry out the objects of this act. And to enable said Commission to complete such surveys, examinations, and investigations, the Secretary of War shall, when requested by said Commission, detail from the Engineer Corps of the Army such officers and men as may be necessary, and shall place in the

To direct surveys.

Detail of assistants, etc.

Sec. 3, *ibid.*

charge and for the use of said Commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the Secretary of the Treasury shall, when requested by said Commission, in like manner detail from the Coast and Geodetic Survey such officers and men as may be necessary, and shall place in the charge and for the use of said Commission such vessel or vessels and such machinery and instruments as may be under his control and may be deemed necessary. And the said Commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such vessels or boats and such instruments and means as may be deemed necessary.<sup>1</sup> *Sec. 3, ibid.*

Duties.  
Sec. 4, *ibid.*

750. It shall be the duty of said Commission to take into consideration and mature such plan or plans and estimates as will correct, permanently locate, and deepen the channel and protect the banks of the Mississippi River; improve and give safety and ease to the navigation thereof; prevent destructive floods; promote and facilitate commerce, trade, and the postal service; and when so prepared and matured, to submit to the Secretary of War a full and detailed report of their proceedings and actions, and of such plans, with estimates of the cost thereof, for the purposes aforesaid, to be by him transmitted to Congress: *Provided*, That the Commission shall report in full upon the practicability, feasibility, and probable cost of the various plans known as the jetty system, the levee system, and the outlet system, as well as upon such others as they deem necessary. *Sec. 4, ibid.*

Report.

To construct  
works.  
Sec. 5, *ibid.*

751. The said Commission may, prior to the completion of all the surveys and examinations contemplated by this

<sup>1</sup> The duties, under the law, of the Missouri River Commission, composed partly of civilians, relate exclusively to certain work quite other than the establishing of harbor lines. It is therefore not, as a body, subject to the directions of the Secretary of War in the matter of establishing harbor lines, nor are the civilian members subject individually to his orders. Thus, while they may consent to establish such lines, it is preferable for the Secretary to cause such work to be done through engineer officers of the Army. (Dig. Opin. J. A. Gen., p. 684, par. 4.)

*Held*, that the Mississippi River Commission derived no authority, from the statutes relating to its functions, to make allotments of the moneys appropriated by Congress for the improvements proposed. Its province is to indicate to Congress what improvements are needed and how much should be appropriated therefor. It has no authority to disburse money appropriated. An allotment made by it is to be treated by the Secretary of War as a recommendation only. The Secretary may adopt the recommendation, but in the disbursement should not omit any of the works specially designated by Congress in the appropriation act. (*Ibid.*, par. 2.)

*Held*, that the maps prepared by the Mississippi Commission, under appropriations by Congress, may legally be disposed of at the discretion of the Commission, it being evidently intended by Congress that the information therein contained should be made public and circulated for the public use and benefit. (*Ibid.*, p. 683, par. 1.)

*Held* (January, 1891), that the allowances for the traveling expenses of the civilian members of the Mississippi and Missouri River commissions were not regulated by any order of the War Department regulating the allowances of civil employees of the military establishment, but were such as are fixed by statute. They are not thus necessarily \$4 per diem, since the statute law provides for the reimbursement of their actual necessary outlay, which may be more or less than this allowance. (*Ibid.*, p. 684, par. 3.)

The traveling expenses of the three civilian members of the Mississippi River

act, prepare, and submit to the Secretary of War plans, specifications, and estimates of cost for such immediate works as, in the judgment of said Commission, may constitute a part of the general system of works herein contemplated, to be by him transmitted to Congress. *Sec. 5, ibid.*

752. The Secretary of War may detail from the Engineer Corps of the Army of the United States an officer to act as secretary of said Commission.<sup>1</sup> *Sec. 6, ibid.*

Secretary.  
*Sec. 6, ibid.*

753. That whenever, in the prosecution and maintenance of the improvement of the Mississippi River and other rivers, harbors, and public works for which appropriations are herein made it becomes necessary or proper, in the judgment of the Secretary of War, to take possession of material found on bars and islands within the river banks, or other material lying adjacent or near to the line of any of said works and needful for their prosecution or maintenance, the officers in charge of said works may, when they cannot agree as to the price with the owners thereof, in the name of the United States take possession of and use the same after first having paid or secured to be paid the value thereof, which may have been ascertained in the mode provided by the laws of the State wherein such property or material lies: *Provided, however,* That when the owner of such property or material shall fix a price for the

Material for  
improvements  
authorized, how  
obtained.

*Sec. 6, July 5,  
1884, v. 23, p. 148.*

Commission and of the member appointed from the Coast and Geodetic Survey include their actual traveling expenses only for all authorized travel on public duty. (3 Dig. Compt. Dec., 219.)

In making appropriations for the improvement of the Mississippi River, Congress evidently contemplates that there shall be provided at public expense, on the vessel transporting the members of the Mississippi River Commission on their trips of inspection, such table comforts only as are generally provided by steamboat companies for the traveling public. (*Ibid.*)

When an appropriation is available for the payment of accounts for "salaries and traveling expenses of the Mississippi River Commission, and for salaries and traveling expenses of assistant engineers, and for office expenses and contingencies," the following expenses are properly payable therefrom under existing laws: (1) The salaries of the three members of the Commission appointed from civil life, at the rate of \$3,000 each per annum, and of those only, the salaries of the other members being otherwise provided for; (2) the salaries of all civilian assistant engineers employed under the Commission, but not that of the secretary of the Commission or of any other assistant engineer detailed from the Corps of Engineers; (3) the actual traveling expenses only, for all authorized travel on public duty, of the three civilian members of the Commission and of the member appointed from the Coast and Geodetic Survey; (4) the actual traveling expenses only, for all authorized travel on public duty, of all civilian assistant engineers employed under the Commission; (5) the mileage of the three members of the Commission appointed from the Engineer Corps of the Army, at the rate of 8 cents per mile, only under circumstances when mileage is authorized by law, for all travel required of them by the Commission pertinent to the objects for which it was constituted, travel so required being travel under orders within the meaning of section 2 of the act of July 24, 1876, chapter 226; (6) the mileage of the secretary of the Commission and of any other assistant engineer detailed from the Corps of Engineers and employed under the Commission, at the rate of 8 cents per mile, only when mileage is authorized by law, for all travel required of them by the Commission pertinent to the objects for which it was constituted; (7) the office expenses of the Commission; (8) the contingent expenses of the Commission. (*Ibid.*, p. 217.)

The salaries accruing to the civilian members of the Mississippi River Commission during a period when the regular appropriation for their payment is not available can not legally be paid from funds appropriated for the improvement of the Mississippi River, unless provision is specifically made therefor in the act appropriating such funds. (*Ibid.*, p. 218.)

<sup>1</sup>Vouchers in support of payments of mileage to officers of the Army belonging to or employed by the Mississippi River Commission should be accompanied by orders for the journeys performed, or by other evidence that they were required by the Commission and were pertinent to the objects for which it was constituted. (*Ibid.*, p. 217.)

same which in the opinion of said officer in charge, shall be reasonable, he may take the same at such price without further delay. The Department of Justice shall represent the interests of the United States in the legal proceedings under this act. *Sec. 6, act of July 5, 1884 (23 Stat. L., 148).*

MISCELLANEOUS PROVISIONS RESPECTING THE MISSISSIPPI RIVER.

Water gauges on the Mississippi River and tributaries.

Feb. 21, 1871, Res. 40, v. 16, p. 598.

Sec. 5252, R. S.

**754.** The Secretary of War is hereby authorized and directed to have water-gauges established, and daily observations made of the rise and fall of the Lower Mississippi River and its chief tributaries, at or in the vicinity of Saint Louis, Cairo, Memphis, Helena, Napoleon, Providence, Vicksburgh, Red River Landing, Baton Rouge, and Carrollton, on the Mississippi, between the mouth of the Missouri and the Gulf of Mexico; and at or in the vicinity of Fort Leavenworth, on the Missouri; Rock Island, on the Upper Mississippi; Louisville, on the Ohio; Florence, on the Tennessee; Jacksonport, on the White River; Little Rock, on the Arkansas; and Alexandria, on the Red River; and at such other places as the Secretary of War may deem advisable. The expenditure for the same shall be made from the appropriation for the improvement of rivers and harbors; but the annual cost of the observations shall not exceed the sum of five thousand dollars.

Piers and cribs on the Mississippi River.

Mar. 3, 1873, c. 278, v. 17, p. 606; May 1, 1882, v. 22, p. 52.

Sec. 5254, R. S.

**755.** The owners of saw-mills on the Mississippi River and the Saint Croix River in the States of Wisconsin and Minnesota are authorized and empowered, under the direction of the Secretary of War, to construct piers or cribs in front of their mill property on the banks of the river, for the protection of their mills and rafts against damage by floods and ice: *Provided, however,* That the piers or cribs so constructed shall not interfere with or obstruct the navigation of the river. And in case any pier or crib constructed under authority of this section shall at any time, and for any cause, be found to obstruct the navigation of the river, the Government expressly reserves the right to remove or direct the removal of it, at the cost and expense of the owners thereof.

Surveys at South Pass, Mississippi River.

Sec. 4, Aug. 11, 1888, v. 25, p. 424.

Appropriation made permanent. V. 18, p. 464.

**756.** That for the purpose of securing the uninterrupted examinations and surveys at the South Pass of the Mississippi River, as provided for in the act of March third, eighteen hundred and seventy-five, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may

be necessary to do such work, not to exceed in the aggregate for each year the amount appropriated in this act for such purpose: *Provided, however,* That an itemized statement of said expenditures shall accompany the Annual Report of the Chief of Engineers. *Sec. 4, act of August 11, 1888 (25 Stat. L., 424).*

757. That the Secretary of War be, and is hereby, authorized to make such rules and regulations for the navigation of the South Pass of the Mississippi River as to him shall seem necessary or expedient for the purpose of preventing any obstruction to the channel through said South Pass and any injury to the works therein constructed.

Regulations for navigation of South Pass, Mississippi River.

Sec. 5, Aug. 11, 1888, v. 25, p. 424.

Sec. 3, Sept. 19, 1890, v. 26, p. 452.

The term "South Pass," as herein employed, shall be construed as embracing the entire extent of channel between the upper ends of the works at the head of the Pass and the outer or sea end of the jetties at the entrance from the Gulf of Mexico; and any willful violation of any rule or regulation made by the Secretary of War in pursuance of this act shall be deemed a misdemeanor, for which the owner or owners, agent or agents, master or pilot of the vessel so offending shall be separately or collectively responsible, and on conviction thereof shall be punished by a fine not exceeding two hundred and fifty dollars or by imprisonment not exceeding three months, at the discretion of the court.<sup>1</sup> *Sec. 5, act of August 11, 1888 (25 Stat. L., 424).*

Penalty for violation.

758. That for the purpose of securing the uninterrupted work of operating snag boats on the Upper Mississippi River, and of removing snags, wrecks, and other obstructions in the Mississippi River, the Secretary of War, upon the application of the Chief of Engineers, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury for such sums as may be necessary to do such work, not to exceed in the aggregate for each year the amounts appropriated in this act for such purposes: *Provided, however,* That an itemized statement of said expenses shall accompany the Annual Report of the Chief of Engineers. *Sec. 4, act of August 11, 1888 (25 Stat. L., 424).*

Snag boats, Upper Mississippi River.

Sec. 7, Aug. 11, 1888, v. 25, p. 424.

Appropriation for, made permanent.

#### MISSOURI RIVER COMMISSION.

759. That a Commission to be called the Missouri River Commission is hereby created, to consist of five members.

Missouri River Commission.

760. That the President shall nominate and, by and with the advice and consent of the Senate, appoint five Commis-

Composition. July 5, 1884, v. 23, p. 144. *Ibid.*

<sup>1</sup> See also, section 3, act of September 19, 1890, (26 Stat. L., 452).

sioners, three of whom shall be selected from the Corps of Engineers of the Army and two from civil life, one of whom at least shall be a civil engineer; and he shall in like manner fill any vacancy in said Commission; and he shall designate one of the Commissioners appointed from the Corps of Engineers to be president of the Commission. The Commissioners appointed from the Corps of Engineers shall receive no other pay or compensation than is allowed them by law, and the other two Commissioners shall each receive for their services pay at the rate of two thousand five hundred dollars per annum, out of any money appropriated for the Missouri River; and all said Commissioners shall remain in office subject to removal by the President of the United States. *Ibid.*

Duties.  
*Ibid.*

761. That it shall be the duty of said Commission to superintend and direct such improvement of said river and to carry into execution such plans for the improvement of the navigation of said river from its mouth to its headwaters as may now be devised and in progress, and to continue and complete such surveys as may now be in progress, and to make such additional surveys, examinations, and investigations, topographical, hydrographical, and hydrometrical, and to consider, devise, and mature such additional plan or plans, and all such estimates as may be deemed necessary and best, to obtain and maintain a channel and depth of water in said river sufficient for the purposes of commerce and navigation, and to accomplish the objects of this act; and to enable the Commission to perform the duties assigned them the Secretary of War is hereby authorized and directed to transfer to and place under the control and superintendence of said Commission all such vessels, barges, machinery, and instruments, and such plant as may now be provided, devised, or in use on said river, from appropriations heretofore made for said river, or other sources, and when thereto requested by said Commission to detail from the Corps of Engineers such officers and men as may be necessary, and to place in the charge of said Commission any such vessels, machinery, and instruments under his control as may be deemed necessary. And said Commission may, with the approval of the Secretary of War, employ such additional force and assistants, and provide, by purchase or otherwise, such additional vessels, boats, machinery, instruments, and means, as may be deemed necessary; to be paid for by appropriations made or to be made for said river. *Ibid.*

**762.** That the said Commission shall, under the direction and with the approval of the Secretary of War, superintend, control, and expend for the purposes of this act all appropriations or unexpended balances heretofore made for the improvement of said river, and which may hereafter be made for said river, or so much thereof as may be necessary, and shall prepare and submit, through the Chief of the Engineer Corps, to the Secretary of War, to be by him transmitted to Congress at the beginning of the regular session in December of each year, a full and detailed report of all their proceedings and actions, and of all such plans and systems of work as may now be devised and in progress and carried out by them, and of all such additional plans and systems of works as may be devised and matured by them, with full and detailed estimates of the cost thereof, and statements of all expenditures made by them; and the Secretary of War may detail from the Corps of Engineers or other corps of the Army an officer to act as secretary of the Commission, to aid them in their work; and all money hereby or hereafter appropriated for the improvement of said Missouri River shall be expended under the direction of the Secretary of War in accordance with the plans, specifications, and recommendations of said Commission when such plans, specifications, and recommendations shall have been approved by Congress. *Ibid.*

Supervision of  
expenditure of  
appropriations.  
*Ibid.*

Secretary.

#### THE CALIFORNIA DÉBRIS COMMISSION.

**763.** That a Commission is hereby created, to be known as the California Débris Commission, consisting of three members. The President of the United States shall, by and with the advice and consent of the Senate, appoint the Commission from officers of the Corps of Engineers, United States Army. Vacancies occurring therein shall be filled in like manner. It shall have the authority and exercise the powers hereinafter set forth, under the supervision of the Chief of Engineers and direction of the Secretary of War.<sup>1</sup> *Act of March 1, 1892 (27 Stat. L., 507).*

California Débris Commission.  
Mar. 1, 1892, v.  
27, p. 507.

**764.** That said Commission shall organize within thirty days after its appointment by the selection of such officers as may be required in the performance of its duties, the same to be selected from the members thereof. The members of said Commission shall receive no greater compensation than is now allowed by law to each, respectively, as an

Organization;  
compensation.

<sup>1</sup>The act of June 14, 1880 (21 Stat. L., 196), required the Secretary of War to cause such surveys, etc., to be made as would enable a scheme to be devised to prevent further injury to the navigable waters of California, due to the deposit in the same of débris from the mines.



officer of said Corps of Engineers. It shall also adopt rules and regulations, not inconsistent with law, to govern its deliberations and prescribe the method of procedure under the provisions of this act. *Sec. 2, ibid.*

**Jurisdiction.** **765.** That the jurisdiction of said Commission, in so far as the same affects mining carried on by the hydraulic process, shall extend to all such mining in the territory drained by the Sacramento and San Joaquin river systems

**Injurious hydraulic mining prohibited.** in the State of California. Hydraulic mining, as defined in section eight hereof, directly or indirectly injuring the navigability of said river systems, carried on in said territory other than as permitted under the provisions of this act is hereby prohibited and declared unlawful. *Sec. 3, ibid.*

**Duty of commission. Plans.** **766.** That it shall be the duty of said Commission to mature and adopt such plan or plans, from examinations and surveys already made and from such additional examinations and surveys as it may deem necessary, as will improve the navigability of all the rivers comprising said systems, deepen their channels, and protect their banks. Such plan or plans shall be matured with a view of making the same effective as against the encroachment of and damage from debris resulting from mining operations, natural erosion, or other causes, with a view of restoring, as near as practicable and the necessities of commerce and navigation demand, the navigability of said rivers to the condition existing in eighteen hundred and sixty, and permitting mining by the hydraulic process, as the term is understood in said state, to be carried on, provided the same can be accomplished, without injury to the navigability of said rivers or the lands adjacent thereto. *Sec. 4, ibid.*

**Surveys of storage sites for debris, reservoirs, etc.** **767.** That it shall further examine, survey, and determine the utility and practicability, for the purposes herein-after indicated, of storage sites in the tributaries of said rivers and in the respective branches of said tributaries, or in the plains, basins, sloughs, and tule and swamp lands adjacent to or along the course of said rivers, for the storage of debris or water or as settling reservoirs, with the object of using the same by either or all of these methods to aid in the improvement and protection of said navigable rivers by preventing deposits therein of debris resulting from mining operations, natural erosion, or other causes, or for affording relief thereto in flood time and providing sufficient water to maintain scouring force therein in the summer season; and in connection therewith to investigate such hydraulic and other mines as are now or may have been worked by methods intended to restrain the debris and

**Inspection of hydraulic and other mines, etc.**

material moved in operating such mines by impounding dams, settling reservoirs, or otherwise, and in general to make such study of and researches in the hydraulic mining industry as science, experience, and engineering skill may suggest as practicable and useful in devising a method or methods whereby such mining may be carried on as aforesaid. *Sec. 5, ibid.*

768. That the said Commission shall from time to time note the conditions of the navigable channels of said river systems, by cross-section surveys or otherwise, in order to ascertain the effect therein of such hydraulic mining operations as may be permitted by its orders and such as is caused by erosion, natural or otherwise. *Sec. 6, ibid.*

Noting condition of navigable channels.  
*Sec. 6, ibid.*

769. That said Commission shall submit to the Chief of Engineers, for the information of the Secretary of War, on or before the fifteenth day of November of each year, a report of its labors and transactions, with plans for the construction, completion, and preservation of the public works outlined in this act, together with estimates of the cost thereof, stating what amounts can be profitably expended thereon each year. The Secretary of War shall thereupon submit same to Congress on or before the meeting thereof. *Sec. 7, ibid.*

Annual report.  
*Sec. 7, ibid.*

770. That for the purposes of this act "hydraulic mining" and "mining by the hydraulic process," are hereby declared to have the meaning and application given to said terms in said State. *Sec. 8, ibid.*

"Hydraulic mining" and "mining by the hydraulic process" defined.  
*Sec. 8, ibid.*

771. That the individual proprietor or proprietors, or in case of a corporation its manager or agent appointed for that purpose, owning mining ground in the territory in the State of California mentioned in section three hereof, which it is desired to work by the hydraulic process, must file with said Commission a verified petition, setting forth such facts as will comply with law and the rules prescribed by said Commission. *Sec. 9, ibid.*

Hydraulic miners must file petition with commission.  
*Sec. 9, ibid.*

772. That said petition shall be accompanied by an instrument duly executed and acknowledged, as required by the law of the said State, whereby the owner or owners of such mine or mines surrender to the United States the right and privilege to regulate by law, as provided in this act, or any law that may hereafter be enacted, or by such rules and regulations as may be prescribed by virtue thereof, the manner and method in which the debris resulting from the working of said mine or mines shall be restrained, and what amount shall be produced therefrom; it being understood that the surrender aforesaid shall not

Contents of petition.  
*Sec. 10, ibid.*

be construed as in any way affecting the right of such owner or owners to operate said mine or mines by any other process or method now in use in said State: *Provided*, That they shall not interfere with the navigability of the aforesaid rivers. *Sec. 10, ibid.*

Joint petition  
by mining claim  
owners requiring  
a common dump-  
ing ground, etc.  
*Sec. 11, ibid.*

773. That the owners of several mining claims situated so as to require a common dumping ground or dam or other restraining works for the débris issuing therefrom in one or more sites may file a joint petition setting forth such facts in addition to the requirements of section nine hereof; and where the owner of a hydraulic mine or owners of several such mines have and use common dumping sites for impounding débris or as settling reservoirs, which sites are located below the mine of an applicant not entitled to use same, such fact shall also be stated in said petition. Thereupon the same proceedings shall be had as provided for herein. *Sec. 11, ibid.*

Notice of peti-  
tion, etc., to be  
published.  
*Sec. 12, ibid.*

774. A notice specifying briefly the contents of said petition and fixing a time previous to which all proofs are to be submitted shall be published by said Commission in some newspaper or newspapers of general circulation in the communities interested in the matter set forth therein. If published in a daily paper such publication shall continue for at least ten days; if in a weekly paper in at least three issues of the same. Pending publication thereof said Commission, or a committee thereof, shall examine the mine and premises described in such petition. On or before the time so fixed all parties interested, either as petitioners or contestants, whether miners or agriculturists, may file affidavits, plans, and maps in support of their respective claims. Further hearings, upon notice to all parties of record, may be granted by the Commission when necessary. *Sec. 12, ibid.*

Examination  
of mine.

Affidavits,  
plans, etc., may  
be filed.

Hearings.

Favorable de-  
cisions within  
thirty days.  
*Sec. 13, ibid.*

775. That in case a majority of the members of said Commission, within thirty days after the time so fixed, concur in a decision in favor of the petitioner or petitioners, the said Commission shall thereupon make an order directing the methods and specifying in detail the manner in which operations shall proceed in such mine or mines; what restraining or impounding works, if facilities therefor can be found, shall be built, and maintained; how and of what material; where to be located; and in general set forth such further requirements and safeguards as will protect the public interests and prevent injury to the said navigable rivers, and the lands adjacent thereto, with such further conditions and limitations as will observe all the provisions of this act in relation to the working thereof and

the payment of taxes on the gross proceeds of the same: *Provided*, That all expense incurred in complying with said order shall be borne by the owner or owners of such mine or mines. *Sec. 13, ibid.*

776. That such petitioner or petitioners must within a reasonable time present plans and specifications of all works required to be built in pursuance of said order for examination, correction, and approval by said Commission; and thereupon work may immediately commence thereon under the supervision of said Commission or representative thereof attached thereto from said Corps of Engineers, who shall inspect same from time to time. Upon completion thereof, if found in every respect to meet the requirements of the said order and said approved plans and specifications, permission shall thereupon be granted to the owner or owners of such mine or mines to commence mining operations, subject to the conditions of said order and the provisions of this act. *Sec. 14, ibid.*

Plans, etc., to be submitted to commission.  
*Sec. 14, ibid.*

Commencement of works.  
Supervision.

Completion.

Permission to commence mining.

777. That no permission granted to a mine owner or owners under this act shall take effect, so far as regards the working of a mine, until all impounding dams or other restraining works, if any are prescribed by the order granting such permission, have been completed and until the impounding dams or other restraining works or settling reservoirs provided by said Commission have reached such a stage as, in the opinion of said Commission, it is safe to use the same: *Provided, however*, That if said Commission shall be of the opinion that the restraining and other works already constructed at the mine or mines shall be sufficient to protect the navigable rivers of said systems and the work of said Commission, then the owner or owners of such mine or mines may be permitted to commence operations. *Sec. 15, ibid.*

Conditions, etc., as to commencing operations.  
*Sec. 15, ibid.*

Navigation, etc., sufficiently protected.

778. That in case the joint petition referred to in section eleven hereof is granted, the Commission shall fix the respective amounts to be paid by each owner of such mines toward providing and building necessary impounding dams or other restraining works. In the event of a petition being filed after the entry of such order, or in case the impounding dam or dams or other restraining works have already been constructed and accepted by said Commission, the Commission shall fix such amount as may be reasonable for the privilege of dumping therein, which amount shall be divided between the original owners of such impounding dams or other restraining works in proportion to the amount respectively paid by each party owning

Allotment of expenses for constructing common dumps, etc.  
*Ante, p. 508.*  
*Sec. 16, ibid.*

Subsequent petitioners to pay for dumping privilege.

Apportionment of such payment to original owners.

same. The expense of maintaining and protecting such joint dams or works shall be divided among mine-owners using the same in such proportion as the Commission shall determine. In all cases where it is practicable, restraining and impounding works are to be provided, constructed, and maintained by mine-owners near or below the mine or mines before reaching the main tributaries of said navigable waters. *Sec. 16, ibid.*

**Maintenance, etc.**  
**Location.**  
**Limit of débris washed away.**  
*Sec. 17, ibid.*

779. That at no time shall any more débris be permitted to be washed away from any hydraulic mine or mines situated on the tributaries of said rivers and the respective branches of each, worked under the provisions of this act, than can be impounded within the restraining works erected. *Sec. 17, ibid.*

**Modifications, etc., of orders.**  
*Sec. 18, ibid.*

780. That the said Commission may at any time, when the condition of the navigable rivers or when the capacities of all impounding and settling facilities erected by mine-owners or such as may be provided by Government authority require same, modify the order granting the privilege to mine by the hydraulic mining process so as to reduce amount thereof to meet the capacities of the facilities then in use, or if actually required in order to protect the navigable rivers from damage, may revoke same until the further notice of the Commission. *Sec. 18, ibid.*

**Forfeiture for violating conditions.**  
*Sec. 19, ibid.*

781. That an intentional violation on the part of a mine owner or owners, company, or corporation, or the agents or employees of either, of the conditions of the order granted pursuant to section thirteen, or such modifications thereof as may have been made by said Commission, shall work a forfeiture of the privileges thereby conferred, and upon notice being served by the order of said Commission upon such owner or owners, company, or corporation, or agent in charge, work shall immediately cease. Said Commission shall take necessary steps to enforce its orders in case of the failure, neglect, or refusal of such owner or owners, company, or corporation, or agents thereof, to comply therewith, or in the event of any person or persons, company, or corporation working by said process in said territory contrary to law. *Sec. 19, ibid.*

**Enforcement of orders, etc.**

**Visiting and inspection of mines.**  
*Sec. 20, ibid.*

782. That said Commission, or a committee therefrom, or officer of said corps assigned to duty under its orders, shall, whenever deemed necessary, visit said territory and all mines operating under the provisions of this act. A report of such examination shall be placed on file. *Sec. 20, ibid.*

• 783. That the said Commission is hereby granted the right to use any of the public lands of the United States, or any rock, stone, timber, trees, brush, or material thereon or therein, for any of the purposes of this act; and the Secretary of the Interior is hereby authorized and requested, after notice has been filed with the Commissioner of the General Land Office by said Commission, setting forth what public lands are required by it under the authority of this section, that such land or lands shall be withdrawn from sale and entry under the laws of the United States. *Sec. 21, ibid.*

Use of public lands and material.  
Sec. 21, *ibid.*

784. That any person or persons who willfully or maliciously injure, damage, or destroy, or attempt to injure, damage, or destroy, any dam or other work erected under the provisions of this act for restraining, impounding, or settling purposes, or for use in connection therewith, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not to exceed the sum of five thousand dollars or be imprisoned not to exceed five years, or by both such fine and imprisonment, in the discretion of the court. *Sec. 22, ibid.*

Willful injury to works a misdemeanor.  
Sec. 22, *ibid.*

Penalty.

785. And any person or persons, company or corporation, their agents or employees, who shall mine by the hydraulic process directly or indirectly injuring the navigable waters of the United States, in violation of the provisions of this act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That this section shall take effect on the first day of May, eighteen hundred and ninety-three. *Ibid.*

Violation of this act a misdemeanor.  
*Ibid.*

Penalty.

When operative.

786. That upon the construction by the said Commission of dams or other works for the detention of debris from hydraulic mines and the issuing of the order provided for by this act to any individual, company, or corporation to work any mine or mines by hydraulic process, the individual, company or corporation operating thereunder working any mine or mines by hydraulic process, the debris from which flows into or is in whole or in part restrained by such dams or other works erected by said Commission, shall pay a tax of three per centum on the gross proceeds of his, their, or its mine so worked; which tax of three per centum shall be ascertained and paid in accordance with regulations to be adopted by the Secretary of the Treasury,

Tax on gross proceeds of hydraulic mines.  
Sec. 23, *ibid.*

and the Treasurer of the United States is hereby authorized to receive the same. *Sec. 23, ibid.*

A "Débris Fund" created. Expenditures from same by the commission. *Ibid.*

787. All sums of money paid into the Treasury under this section shall be set apart and credited to a fund to be known as the "Debris Fund," and shall be expended by said Commission under the supervision of the Chief of Engineers and direction of the Secretary of War, in addition to the appropriations made by law in the construction and maintenance of such restraining works and settling reservoirs as may be proper and necessary: *Provided*, That said commission is hereby authorized to receive and pay into the Treasury from the owner or owners of mines worked by the hydraulic process, to whom permission may have been granted so to work under the provisions hereof, such money advances as may be offered to aid in the construction of such impounding dams or other restraining works, or settling reservoirs, or sites therefor, as may be deemed necessary by said Commission to protect the navigable channels of said river systems, on condition that all moneys so advanced shall be refunded as the said tax is paid into the said debris fund: *And provided further*, That in no event shall the Government of the United States be held liable to refund same except as directed by this section. *Ibid.*

Commission may consult with State commission of engineers. *Sec. 24, ibid.*

788. That for the purpose of securing harmony of action and economy in expenditures in the work to be done by the United States and the State of California, respectively, the former in its plans for the improvement and protection of the navigable streams and to prevent the depositing of mining debris or other materials within the same, and the latter in its plans authorized by law for the reclamation, drainage, and protection of its lands, or relating to the working of hydraulic mines, the said Commission is empowered to consult thereon with a commission of engineers of said State, if authorized by said State for said purpose, the result of such conference to be reported to the Chief of Engineers of the United States Army, and if by him approved shall be followed by said Commission. *Sec. 24, ibid.*

Appropriations from debris fund to be expended in restraining works, etc., above head of navigation, etc. *Sec. 25, ibid.*

789. That said Commission, in order that such material as is now or may hereafter be lodged in the tributaries of the Sacramento and San Joaquin River systems, resulting from mining operations, natural erosion, or other causes, shall be prevented from injuring the said navigable rivers or such of the tributaries of either as may be navigable and the land adjacent thereto, is hereby directed and empowered, when appropriations are made therefor by law, or suffi-

cient money is deposited for that purpose in said debris fund, to build at such points above the head of navigation in said rivers and on the main tributaries thereof, or branches of such tributaries, or at any place adjacent to the same which, in the judgment of said Commission, will effect said object (the same to be of such material as will insure safety and permanency), such restraining or impounding dams and settling reservoirs, with such canals, locks, or other works adapted and required to complete same. *Sec. 25, ibid.*

790. The recommendations contained in Executive Document Numbered Two hundred and sixty-seven, Fifty-first Congress, second session, and Executive Document Numbered Ninety-eight, Forty-seventh Congress, first session, as far as they refer to impounding dams, or other restraining works, are hereby adopted, and the same are directed to be made the basis of operations. The sum of fifteen thousand dollars is hereby appropriated, from moneys in the Treasury not otherwise appropriated, to be immediately available, to defray the expenses of said Commission. *Ibid.*

Recommendations adopted and made the basis of operations.

*Ibid.*

Appropriations.

791. That the Treasurer of the United States be, and he is hereby, authorized to receive from the State of California, through the Débris Commission of said State, or other officer thereunto duly authorized, any and all sums of money that have been, or may hereafter be, appropriated by said State for the purposes herein set forth. And said sums when so received are hereby appropriated for the purposes above named, to be expended in the manner above provided. *Act of June 3, 1896 (29 Stat. L., 232).*

Treasurer of the United States to receive funds appropriated by the State of California.

June 3, 1896, v. 29, p. 232.

#### FORTIFICATIONS.<sup>1</sup>

Par.

792. Sites for fortifications.

Par.

793. Construction of fortifications; contracts.

792. For the procurement of land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, five

Procurement of sites.

Aug. 18, 1890, v. 26, p. 316.

<sup>1</sup> See also the title "Board of Ordnance and Fortification," in the chapter entitled THE ORDNANCE DEPARTMENT. See also par. 696, *ante*.

The act of February 10, 1875, contained the following provision: "For torpedoes for harbor defenses, and the preservation of the same, and for torpedo experiments in their application to harbor and land defense, and for instruction of engineer battalion in their preparation and application, fifty thousand dollars: *Provided*, That the money herein appropriated for torpedoes shall only be used in the establishment and maintenance of torpedoes to be operated from shore stations for the destruction of an enemy's vessel approaching the shore or entering the channels and fairways of harbors," which was repeated in the acts of February 10, 1875, June 20, 1876, March 3, 1877, March 23, 1878, March 3, 1879, May 4, 1880, March 3, 1881, and May 19, 1882. The act of March 3, 1883, contained the requirement that "one-half of the money herein appropriated may be used in the purchase of torpedoes of the latest improvement."

If, in the opinion of the Chief of Engineers, a contemplated building will be an appliance necessary in the operation of submarine mines for the defense of harbors, or will, when completed, be used in operating such mines, or in such a way as to render their operation possible for the defense of harbors, the cost of its erection is chargeable to the appropriation for torpedoes for harbor defense. 3 Compt. Dec., 30.



hundred thousand dollars, or so much thereof as may be necessary, and hereafter the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement, by condemnation, of any land, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications and coast defenses, such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land or rights pertaining thereto shall fix a price for the same, which, in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: *Provided further*, That the Secretary of War is hereby authorized to accept on behalf of the United States donations of lands or rights pertaining thereto required for the above-mentioned purposes: *And provided further*, That nothing herein contained shall be construed to authorize an expenditure, or to involve the Government in any contract or contracts for the future payment of money, in excess of the sums appropriated therefor.<sup>1</sup> *Act of August 18, 1890 (26 Stat. L., 316).*

Construction  
of fortifications;  
contracts.  
June 6, 1896,  
v. 29, p. 257.

**793.** For construction of fortifications, two million five hundred thousand dollars; of which sum not exceeding one hundred thousand dollars may be expended for the construction of the necessary buildings connected therewith: *Provided*, That contracts may be entered into, under the direction of the Secretary of War, for materials and work for construction of fortifications, to be paid for

<sup>1</sup> When an engineer is sent to any military department, fortress, garrison, or post, a duplicate of his orders will be sent to the commanding officer. On his arrival the engineer will communicate his orders, and necessary facilities for executing them will be afforded by the commanding officer. While so on duty, without being especially put under the direction of the commanding officer, the engineer officer will be furnished with copies of all orders and regulations of the command relative to etiquette and police, and with the countersign when quartered within a chain of sentinels. The engineer officer will report to the commanding officer when relieved from duty within the limits of the command. (Par. 1483, A. R., 1895.)

Engineer officers engaged in the construction of fortifications or other public works are entitled to allowances of quarters, mess rooms, and kitchens, with fuel for the same, as are provided by regulations for officers at garrisoned posts. (Par. 1484, *ibid.*)

No alterations will be made in any fortification or in its casemates, quarters, barracks, magazines, storehouses, or any other building belonging to it, nor will any building of any kind or work of earth, masonry, or timber be erected within the fortification or within a mile of its exterior, except under the direction of the Chief of Engineers and by authority of the Secretary of War. (Par. 1485, *ibid.*)

When the Chief of Engineers is satisfied that any fortification is in all respects complete so far as the functions of his department are concerned, he will give notice thereof to the Secretary of War, that it may be turned over for occupation by the troops. Until its completion has been announced, no work will be occupied by troops except by the special order of the Secretary of War. (Par. 1486, *ibid.*)

Where land proposed to be conveyed by a State to the United States for the purpose of fortifications was described in the proffered deed as extending to the sea and in a line along the sea, held that such a deed would convey only land extending to and bounded by high-water mark, and advised that the grant should be so expressed as specifically to include the shore to low-water mark, and should also embrace such water-covered lands as would be sufficient to prevent the erection by the authority of the State of structures that might interfere with the proper use of the land for purposes of fortifications. Dig. Opin. J. A. Gen., 465, par. 2.

as appropriations may from time to time be made by law, to an additional sum in the aggregate not to exceed two million five hundred thousand dollars. *Act of June 6, 1896 (29 Stat. L., 257).*

## RIVER AND HARBOR WORKS.

Par.	Par.
794. Navigable rivers within public lands to be public highways.	801. Preliminary surveys; reports.
795. Rivers in Louisiana.	802. Preliminary examinations.
796. The Iowa River.	803. Supplemental reports prohibited.
797. The Des Moines River.	804. List of surveys to be submitted to Congress.
798. Certain rivers in Alabama to be free from tolls.	805. Compilation of laws relating to improvement, etc., of the navigable waters of the United States.
799. The Maquoketa River.	
800. Commercial statistics at river and harbor works.	

## NAVIGABLE WATERS OF THE UNITED STATES.

**794.** All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.

Navigable rivers within public lands to be public highways.

May 18, 1796, c. 29, s. 9, v. 1, p. 468; Mar. 3, 1803, c. 27, s. 17, v. 2, p. 235. Sec. 2476, R. S.

**795.** All the navigable rivers and waters in the former Territories of Orleans and Louisiana shall be and forever remain public highways.<sup>1</sup>

Rivers in Louisiana.

Mar. 3, 1811, c. 46, s. 12, v. 2, p. 606. Sec. 5251, R. S.

**796.** So much of the Iowa River within the State of Iowa as lies north of the town of Wapello shall not be deemed a navigable river or public highway, but dams and bridges may be constructed across it.

The Iowa River.

July 13, 1868, Res. No. 55, v. 13, p. 257; May 6, 1870, c. 92, v. 16, p. 121.

**797.** The Des Moines River shall forever remain free from any toll, or other charge whatever, for any property of the United States, or persons in their service, passing along the same.

Sec. 5248, R. S. The Des Moines River.

Aug. 8, 1846, c. 103, s. 3, v. 9, p. 78; Jan. 20, 1870, c. 7, v. 16, p. 61.

Sec. 5246, R. S.

**798.** The Tennessee, Coosa, Cahawba, and Black Warrior Rivers, within the State of Alabama, shall be forever free from toll for all property belonging to the United States, and for all persons in their service, and for all citizens of the United States, except as to such tolls as may be allowed by act of Congress.

Certain rivers in Alabama to be free from tolls.

May 23, 1828, c. 75, s. 7, v. 4, p. 290. Sec. 5244, R. S.

**799.** The assent of Congress is given to the construction of bridges across the Maquoketa River, within the State of Iowa, with or without draws, as may be provided by the laws of that State.

The Maquoketa River.

July 13, 1868, Res. No. 55, s. 1, v. 15, c. 257.

Sec. 5250, R. S.

<sup>1</sup>The doctrine of the common law as to the navigability of waters has no application in this country. Here the ebb and flow of the tide do not constitute the usual test, as in England, or any test at all of the navigability of waters. The test by

## RIVER AND HARBOR WORKS.

Commercial  
statistics at river  
and harbor  
works.

Feb. 21, 1892,  
v. 26, p. 766.  
V. 14, pp. 73,  
421.

**800.** That owners, agents, masters, and clerks of vessels arriving at or departing from localities where works of river and harbor improvement are carried on shall furnish, on application of the persons in local charge of the works, a comprehensive statement of vessels, passengers, freight, and tonnage. That every person or persons offending against the provisions of this act shall, for each and every offense, be liable to a fine of one hundred dollars, or imprisonment not exceeding two months, to be enforced in any district court in the United States within whose territorial jurisdiction such offense may have been committed. *Act of February 21, 1891 (26 Stat. L., 766).*

## PRELIMINARY SURVEYS.

Preliminary  
surveys.  
Aug. 2, 1882, v.  
22, p. 213.

**801.** That in every case where surveys are made, the report thereon shall embrace such information concerning the commercial importance, present and prospective, of the improvement contemplated thereby and such general

which to determine the navigability of waters in our rivers is found in their navigable capacity. Those rivers are navigable rivers in law which are navigable in fact. Rivers are navigable in fact when they are used, or are susceptible of being used, in their ordinary condition, as highways for commerce, on which trade and travel are, or may be conducted, in the customary modes of trade and travel on waters; and they constitute navigable waters of the United States, within the meaning of the acts of Congress, in contradistinction from the navigable waters of the States, when they form, in their ordinary condition, by themselves, or by uniting with other waters, a continued highway over which commerce may be carried on, with other States or foreign countries, in the customary modes in which such commerce is conducted by water. *The Daniel Ball*, 10 Wall., 557; *The Montello*, 11 Wall., 411; *Ex parte Boyer*, 109 U. S., 629.

If a river is not of itself a highway for commerce with other States or foreign countries, or does not form such highway by its connection with other waters, and is only navigable between different places within the State, it is not a navigable water of the United States, but only a navigable water of a State. *The Montello*, 11 Wall., 411.

The right to regulate commerce includes the right to regulate navigation, and hence to regulate and improve navigable rivers and ports on such rivers. *So. Car. v. Ga.*, 93 U. S., 4; *Gilman v. Philadelphia*, 3 Wall., 713.

In the case of the *Willamette Bridge Co. v. Hatch* (125 U. S., 1), it was held that clauses similar to that contained in the ordinance of 1787 (1 Stat. L., 52, note) to the effect that "the navigable waters leading into the Mississippi and the St. Lawrence, and the carrying places between them, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States and those of any other States that may be admitted into the Confederacy, without any tax, impost, or duty therefor" (see also act of February 14, 1859, 11 Stat. L., 383), do not refer to physical obstructions, but to political regulations which would hamper the freedom of commerce, \* \* \* and can not be regarded as establishing the police power of the United States over such river, or as giving the Federal courts jurisdiction to hear and determine, according to Federal law, every complaint that may be made of an impediment in, or an encroachment upon, the navigation of these rivers. \* \* \* Nor does the expenditure of money in improving navigation of such rivers import an assumption of police power.

When Congress, in the exercise of its exclusive power to direct how the public money shall be employed, has appropriated a certain sum, to be devoted, without exceptions or provisos, to certain specific internal improvement, it devotes upon the Executive Department of the Government, charged as it is with the execution of the laws enacted by the legislature, to proceed with the work under the appropriation, without entertaining any question as to the expediency of the expenditure. Thus where Congress had made in general terms an appropriation of a specific amount for improving a certain river, advised that it was for the officer charged with the improvement simply to do the work, without delaying, to raise or consider questions or claims of title to the land, etc., to be affected by the improvement; such matters being quite beyond the province of an executive official under the circumstances. *Dig. Opin. J. A. Gen.*, 446, par. 1; 532, pars. 8, 9.

The United States is not the owner of the soil of the beds of navigable waters (a) nor of the shores of tide waters below high-water mark, nor of the shores of waters

<sup>a</sup> See the definition of the term "navigable waters of the United States," in *The Daniel Ball*, 10 Wall., 557; *Ex parte Boyer*, 109 U. S., 629.

commercial statistics as the Secretary of War may be able to procure.<sup>1</sup>

802 That the preliminary examinations ordered in this act shall be made by the local engineer in charge of the district, or an engineer detailed for the purpose; and such local or detailed engineer and the division engineer of the locality shall report to the Chief of Engineers, first, whether, in their opinion, the harbor or river under examination is worthy of improvement by the General Government, and shall state in such report fully and particularly the facts and reasons on which they base such opinions, including the present and prospective demands of commerce; and, second, if worthy of improvement by the General Government, what it will cost to survey the same with a view of submitting plan and estimate for its improvement; and the Chief Engineer shall submit to the Secretary of War the reports of the local and division engineers, with his views thereon and his opinion of the public necessity or convenience to be subserved by the proposed improvement; and all such reports of preliminary examinations, with such recommendations as he may see proper to make, shall be transmitted by the Secretary of War to the House

Preliminary examination to be made before survey.

Sec. 7, July 13, 1892, v. 27, p. 115.

not affected by the tide below the ordinary water line of the same, except as it may have become grantee of such soil from the State or from individuals. The property and jurisdiction in and over the beds and shores of navigable waters is in general in the State, or in the individual riparian owner as grantee mediately or immediately from the State (a). But under the power to regulate commerce Congress may assume, as it has recently assumed, the power so to regulate navigation over navigable waters within the States as to prohibit its obstruction and to cause the removal of obstructions thereto, and such power when exercised is exclusive (b). In exercising this power it can not divest rights of title or occupation in a State or individuals, but these rights are left to be enjoyed as before, subject, however, to the paramount public right of freeing navigation from obstruction possessed and exercised by the United States through Congress. In the execution of the laws relating to obstructions to navigation the Secretary of War has no general authority, but only such as may have been vested in him by legislation of Congress, especially in the river and harbor appropriation acts. (*Ibid.*, 529, par. 1.)

As between the United States and a State, the soil of the bed of navigable waters and of the shores of tide waters below high-water mark, or—on rivers not reached by the tide—the soil of the shores below the ordinary water line (as not affected by freshet or unusual drought) belongs to the State. But natural accretions to land owned by private individuals belong to the owners of the land. Thus, *held* that the accretions to Hog Island, in the mouth of the Missouri River, belonged, not to the United States or to the State of Missouri, but to the owner of the island. *Ibid.*, 465, par. 1; 515, pars. 11, 12.

*Held* that it was doubtful whether "floatable" streams, i. e., streams capable only of being used for floating saw-logs, timber, etc., not being navigable in a general sense, were included in the term "navigable waters of the United States," as employed in statutes providing that dams shall not be constructed in such waters without the permission of the Secretary of War. But *held* that it was clearly competent for Congress, under the commerce clause of the Constitution, to exercise legislation over such streams as highways of interstate commerce. (*Ibid.*, 535, par. 20.) See also *Martin v. Waddell*, 16 Pet., 367; *Pollard v. Hagan*, 3 How., 212; *Pennsylvania v. Wheeling Bridge Co.*, 13 How., 518; *Den v. Jersey Co.*, 15 How., 426.

#### POWER OF THE STATES.

Until the dormant power of the Constitution is awakened and made effective, by appropriate legislation, the reserved power of the States is plenary, and its exercise in good faith can not be made the subject of review by this court. *Gilman v.*

<sup>1</sup>This provision was repeated in the act of August 5, 1886 (24 Stat. L., 335).

<sup>a</sup>*Pollard v. Hagan*, 3 How., 212; *Barney v. Keokuk*, 94 U. S., 337; *Gilman v. Philad.*, 3 Wall., 713; *South Carolina v. Georgia*, 98 U. S., 4; 6 Op. Att. Gen., 172; 7 *ibid.*, 314; 16 *ibid.*, 479.

<sup>b</sup>*Wisconsin v. Duluth*, 96 U. S., 379.

of Representatives, and are hereby ordered to be printed when so made.<sup>1</sup> *Sec. 7, act of July 13, 1892 (27 Stat. L., 115).*

Supplemental reports prohibited unless called for by concurrent resolution of Congress.

June 3, 1896, v. 29, p. 235.

**803.** That after the regular or formal report on any examination, survey, project, or work under way or proposed is submitted, no supplemental or additional report or estimate for the same fiscal year shall be made unless ordered by a concurrent resolution of Congress. The Government shall not be deemed to have entered upon any project for the improvement of any waterway or harbor mentioned in this Act until funds for the commencement of the proposed work shall have been actually appropriated by law. *Sec. 4, act of June 3, 1896 (29 Stat. L., 235).*<sup>2</sup>

List of surveys to be submitted to Congress by the Secretary of War.

Sec. 6, June 3, 1896, v. 29, p. 235.

**804.** The Secretary of War is hereby authorized and directed to cause to be made and transmitted to the first session of the Fifty-fifth Congress a compilation giving a complete list of all the preliminary examinations that have heretofore been made, date of report, with a statement as to each, whether favorable or unfavorable for survey; also a complete list of all surveys that have heretofore been made, with a statement as to each, whether favorable for adoption or unfavorable, and date of report, amount recommended for completion and amount recommended for each to be expended during the fiscal year beginning July first, eighteen hundred and ninety-eight, by both the Chief of Engineers and the engineer in charge; also a complete list of all projects now under construction or maintenance, together with the year when adopted, and if modified, when, the total amount expended on each project and esti-

Philadelphia, 3 Wall., 713. The power to construct works of river and harbor improvement in the navigable waters of the United States, as an incident of the power to regulate commerce "covering as it does a wide field, and embracing a great variety of subjects, some of which will call for uniform rules and national legislation, while others can best be regulated by rules suggested by the varying circumstances of differing places, and limited in their operation to such places respectively; and to the extent required by these last cases, the power to regulate commerce may be exercised by the States." *Ibid.* However, Congress may interpose whenever it shall be deemed necessary, by either general or special laws. It may regulate all bridges over navigable waters, remove offending bridges, and punish those who shall thereafter erect them. *Ibid.* It is for Congress to determine when its full power shall be brought into activity, and as to the regulations and sanctions which shall be provided. *U. S. v. New Bedford Bridge*, 1 Woodbury and Minot, 420, 421; *U. S. v. Cornet*, 12 Pet., 72; *N. Y. v. Milne*, 11 Pet., 102, 155; *The Wheeling Bridge Cases*, 13 How., 518; 18 *ibid.*, 521.

A State has power to change the channels of rivers within the State for purposes of internal improvement. *Withers v. Buckley*, 20 How., 84; *So. Car. v. Ga.*, 93 U. S., 4. In the absence of legislation by Congress, a State statute authorizing the erection of a dam across a navigable river which is wholly within its limits is not unconstitutional. *Wilson v. Blackbird Creek Marsh Co.*, 2 Pet., 245; *Pound v. Turk*, 95 U. S., 459.

The Chicago River is navigable and under control of Congress; but, until that body acts the State of Illinois has authority, and may vest in the city of Chicago jurisdiction over the construction of a bridge within the city limits. *Escanaba Co. v. Chicago*, 107 U. S., 678. The State of Michigan authorized the improvement of a river wholly within that State, and the exaction of tolls for the use of the river so improved. *Held*, that the statute did not impair the contract contained in the ordinance of 1787, giving the people the right to use the waters leading into the St. Lawrence free of duty, tax, or impost. *Sands v. Manistee River Imp. Co.*, 123 U. S., 288; *Ruggles v. The Same*, *ibid.*, 297.

<sup>1</sup> This provision was repeated in the act of August 7, 1894 (28 Stat. L., 369). See, also, for a similar provision, the acts of August 2, 1882 (22 Stat. L., 213); July 5, 1884 (23 Stat. L., 153); August 5, 1886 (24 Stat. L., 335); August 11, 1888 (25 Stat. L., 433); September 19, 1890 (26 Stat. L., 464); August 17, 1894 (28 Stat. L., 372), and June 3, 1896 (29 Stat. L., 234).

<sup>2</sup> See also, for a similar provision, section 14 of the act of August 1, 1888 (25 Stat. L., 433), and section 13 of the act of August 17, 1894 (28 Stat. L., 371).

mate of amount required to complete the same, and amount recommended by the Chief of Engineers and by the engineer in charge to be expended during the fiscal year beginning July first, eighteen hundred and ninety-eight, the amount appropriated for each project by this Act, making reference to the report of the Chief of Engineers where report of each project is given, together with a statement containing the amount of the unexpended balance to the credit of each project July first, eighteen hundred and ninety-seven, whether under construction, work suspended, or appropriation made and work not commenced; also the total amounts appropriated heretofore for the improvement and maintenance of the rivers and the total amounts heretofore appropriated for the improvement and maintenance of harbors in each river and harbor act; also the total amount of appropriation by States for the improvement of rivers and harbors. *Sec. 6, act of June 3, 1896 (29 Stat. L., 235).*

**805.** That the Secretary of War is directed to cause to be prepared a compilation of all general laws that have been enacted from time to time by Congress for the maintenance, protection, and preservation of the navigable waters of the United States which are now in force, and to submit the same to Congress at its session in December next, together with such recommendation as to revision, emendation, or enlargement of the said laws as, in his judgment, will be advantageous to the public interest. *Sec. 2, act of June 3, 1896 (29 Stat. L., 234).*

Compilation of laws relating to improvement, etc., of navigable waters to be prepared.

*Sec. 2, June 3, 1896, v. 29, p. 234.*

#### CONTRACTS AND PURCHASES.<sup>1</sup>

Par.	Par.
806. Application of appropriations; contracts.	810. Condemnation of lands.
807. Two or more works in one contract.	811. Contracts for completed work authorized.
808. Rejection of bids.	812. Limitation on payments upon works constructed on the continuous-contract system.
809. Material for improvements may be taken.	

**806.** That it shall be the duty of the Secretary of War to apply the money herein and hereafter appropriated for improvements of rivers and harbors, other than surveys, estimates and gaugings, in carrying on the various works, by contract or otherwise, as may be most economical and advantageous to the Government. Where said works are done by contract, such contract shall be made after sufficient public advertisement for proposals, in such manner

Application of appropriations.  
*Sec. 3, Aug. 11, 1888, v. 25, p. 423.*

Contracts.

<sup>1</sup>See also the chapter entitled CONTRACTS AND PURCHASES, which regulates the procurement of all supplies and services not expressly excepted therefrom by statute, as in the case of purchases of supplies for works of river and harbor improvement.

and form as the Secretary of War shall prescribe; and such contracts shall be made with the lowest responsible bidders, accompanied by such securities as the Secretary of War shall require, conditioned for the faithful prosecution and completion of the work according to such contract.<sup>1</sup> *Sec. 3, act of August 11, 1888 (25 Stat. L., 423).*

Two or more works may be in one contract, etc. R. S., sec. 3717, p. 734, modified. V. 25, p. 423. Sec. 2, Sept. 19, 1890, v. 26, p. 452.

**807.** That nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character.<sup>2</sup> *Sec. 2, act of September 19, 1890 (26 Stat. L., 452).*

Rejection of bids. Sec. 2, July 13, 1892, v. 27, p. 110.

**808.** That in cases where authority has been granted to the Secretary of War in this act to make contracts for the completion of certain works of river and harbor improvement, he is hereby authorized to reject any bids not in his opinion advantageous to the Government, and to issue new proposals. *Sec. 2, act of July 13, 1892 (27 Stat. L., 110).*

Material for improvements may be taken. July 5, 1884, v. 23, p. 147.

**809.** That whenever, in the prosecution and maintenance of the improvement of the Mississippi River and other rivers, harbors, and public works for which appropriations are herein made it becomes necessary or proper, in the judgment of the Secretary of War, to take possession of material found on bars and islands within the river banks, or other material lying adjacent or near to the line of any of said works and needful for their prosecution or maintenance, the officers in charge of said works may, when they

<sup>1</sup> The appropriation of money for the improvement of a harbor on a navigable river confers discretionary power upon the Secretary of War as to the means by which such improvement shall be effected. *So. Car. v. Ga.*, 93 U. S., 4. The operations of the Government in this regard have been conducted by the Bureau of Engineering, as part of the War Department, to which Congress has confided the execution of its wishes in all those matters. \* \* \* It can not be necessary to say that, when a public work of this character has been inaugurated or adopted by Congress and its management placed in control of its officers, there exists no right in any other branch of the Government to forbid the work or to require the undoing of what has been done or to prescribe the manner in which it shall be conducted. *Wisconsin v. Duluth*, 96 U. S., 379. For these purposes Congress possesses all the powers which existed in the States before the adoption of the Constitution, and which have always existed in the Parliament of England. *Gilman v. Philadelphia*, 3 Wall., 713.

Where an officer or agent, charged under the Secretary of War and the Chief of Engineers with the duty of making purchases out of the appropriations for river and harbor improvements, certifies that the prices paid were the lowest market rates and the mode of expenditure adopted the most economical and advantageous to the Government, and the Chief of Engineers approves his account so far as relates to the necessity and expediency of the expenditures and the prices paid, it is not within the province of the accounting officers to call in question the degree of wisdom or skill which may have accompanied the exercise of administrative discretion. 3 Compt., Dec. 22. It is the duty of the proper officers of the War Department to determine when such an emergency exists requiring immediate delivery of property necessary for river and harbor improvements as will authorize its purchase in open market without advertisement. Discretionary power in this respect is vested by law in the War Department, and the exercise of such discretion is not properly reviewable by the accounting officers. 3 Dig. Compt. Dec., 288.

<sup>2</sup> This provision was repeated in the act of August 5, 1886 (24 Stat. L., 330).

cannot agree as to the price with the owners thereof, in the name of the United States take possession of and use the same after first having paid or secured to be paid the value thereof, which may have been ascertained in the mode provided by the laws of the State wherein such property or material lies: *Provided, however,* That when the owner of such property or material shall fix a price for the same which in the opinion of said officer in charge, shall be reasonable, he may take the same at such price without further delay. The Department of Justice shall represent the interests of the United States in the legal proceedings under this act. *Act of July 5, 1884 (23 Stat. L., 147).*

#### PURCHASE OF LANDS.

810. That the Secretary of War may cause proceedings to be instituted, in the name of the United States, in any court having jurisdiction of such proceedings, for the acquirement by condemnation of any land, right of way, or material needed to enable him to maintain, operate or prosecute works for the improvement of rivers and harbors for which provision has been made by law; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided, however,* That when the owner of such land, right of way, or material shall fix a price for the same, which in the opinion of the Secretary of War, shall be reasonable, he may purchase the same at such price without further delay: *And provided further,* That the Secretary of War is hereby authorized to accept donations of lands or materials required for the maintenance or prosecution of such works.<sup>1</sup> *Act of April 24, 1888 (25 Stat. L., 94).*

Condemnation of lands for river and harbor improvements. Apr. 24, 1888, v. 25, p. 94.

#### THE CONTINUOUS CONTRACT SYSTEM.

811. Constructing harbor of refuge, Delaware Bay, Delaware, in accordance with plans submitted by the Chief of Engineers January twenty-ninth, eighteen hundred and ninety-two, five thousand dollars: *Provided,* That contracts may be entered into by the Secretary of War for such

Contracts for completed work authorized. June 3, 1896, v. 29, p. 207.

<sup>1</sup>For general provisions in respect to the acquisition of land by the United States, see the act of August 1, 1888, and the chapters entitled THE PUBLIC LANDS and THE DEPARTMENT OF JUSTICE. The acts of June 14, 1880 (21 Stat. L., 193), and March 3, 1881 (*ibid.*, 482), authorized the expenditure of funds in the acquisition of sites for river and harbor improvements, by voluntary purchase or condemnation, under the direction of the Secretary of War, with the proviso "that if the owners of such lands shall refuse to sell them at reasonable prices, then the prices to be paid shall be determined and the title and jurisdiction procured in the manner prescribed by the laws of the State in which such lands or sites are situated."



material and work as may be necessary to complete said harbor of refuge, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate four million six hundred and sixty thousand dollars, exclusive of the amount herein appropriated: *Provided further*, That in making such contracts, the Secretary of War shall not obligate the Government to pay in any one fiscal year, beginning July first, eighteen hundred and ninety-seven, more than twenty-five per centum of the whole amount authorized to be expended.

Improving harbor at Wilmington, and Christiana River, Delaware: Continuing improvement, in accordance with the modified project, twenty thousand dollars: *Provided moreover*, That of which amount five thousand dollars may, in the discretion of the Secretary of War, be expended during the year eighteen hundred and ninety-six in improving the channel between Churchman's Bridge and Snalley's Bridge on said river, of which sum one-half shall be expended below and the other half above the draw-bridge at Christiana village: *And provided further*, That contracts may be entered into by the Secretary of War for such materials and work as may be necessary to complete the project of improvement, not including estimate for flushing basin and extension of jetty, to be paid for as appropriations may from time to time be made by law, not to exceed in the aggregate two hundred and twenty-five thousand eight hundred and forty-six dollars.<sup>1</sup> *Act of June 3, 1896 (29 Stat. L., 207).*

Limitation on payments upon works constructed under the continuous-contract system.

Sec. 5, June 3, 1896, v. 29, p. 235.

**812.** That under the authority to make contracts for materials and work, under the provisions of this Act, in addition to the sums appropriated herein, the Secretary of War shall not obligate the Government to pay, in any one fiscal year, beginning July first, eighteen hundred and ninety-seven, more than four hundred thousand dollars upon the said contracts for any one of the works herein placed under the contract system, except as herein otherwise specifically authorized to do: *Provided* any part of the annual allotment herein provided for, not earned and paid for material furnished or work done in one fiscal year, may be paid for material furnished and work done under the contracts in any subsequent fiscal year: *Provided further*, That nothing herein contained shall be so construed as to prevent the Secretary of War from making contracts for

<sup>1</sup> The above statute is an example of a work of river and harbor improvement authorized to be carried on under the continuous-contract system. This system has been applied to such constructions in the several acts of appropriation since that of September 19, 1890 (26 Stat. L., 426).

the whole or any part of the works placed under the contract system in such manner as may be deemed best, payments, however, to be made as stated in this section. *Sec. 5, act of June 3, 1896 (29 Stat. L., 235).*

### OPERATION OF CANALS AND OTHER WORKS OF IMPROVEMENT.

Par.

813. Tolls not to be levied or collected on canals.

814. Use of canals, etc., to be regulated by Secretary of War.

Par.

815. Regulations to be posted.

**813.** That no tolls or operating charges whatsoever shall be levied or collected upon any vessel or vessels, dredges, or other passing water craft through any canal or other work for the improvement of navigation belonging to the United States; and for the purpose of preserving and continuing the use and navigation of said canals, rivers, and other public works without interruption, the Secretary of War, upon the application of the chief engineer in charge of said works, is hereby authorized to draw his warrant or requisition from time to time upon the Secretary of the Treasury to pay the actual expenses of operating and keeping said works in repair, which warrants or requisitions shall be paid by the Secretary of the Treasury, out of any money in the Treasury not otherwise appropriated: *Provided, however,* That an itemized statement of said expenses shall accompany the annual report of the Chief of Engineers.<sup>1</sup>

Tolls not to be levied or collected on canals, etc.  
*Sec. 4, July 5, 1884, v. 23, p. 147.*

**814.** That it shall be the duty of the Secretary of War to prescribe such rules and regulations for the use, administration, and navigation of any or all canals and similar works of navigation that now are, or that hereafter may be, owned, operated, or maintained by the United States as in his judgment the public necessity may require.<sup>2</sup>

Payments for actual expenses of operation and repair authorized.

Use of canals, etc., to be regulated by Secretary of War.  
*Sec. 4, Aug. 17, 1894, v. 28, p. 362.*

<sup>1</sup> The effect of this statute is to repeal so much of sections 5245, 5247, 5249, and 5255, Revised Statutes, as authorizes the imposition of tolls or other charges for the use of canals or other works of river and harbor improvement erected at the expense of the United States. Section 5255 vested the management of the Louisville and Portland Canal in the Secretary of the Treasury at reduced rates of toll. The tolls were still further reduced by the act of May 11, 1874 (18 Stat. L., 43), and the control of the canal transferred to the Secretary of War, who, by the act of July 5, 1884 (23 Stat. L., 148), was given authority to make, post, and enforce regulations for the use of the canal, and this legislation was repealed in the act of September 30, 1888 (25 Stat. L., 497). The acts of May 18, 1880 (21 Stat. L., 141) and August 2, 1882 (22 Stat. L., 209), contained a provision that no tolls or operating charges should be levied upon or collected from vessels, dredges, or other water craft passing through any canal or other improvement of navigation belonging to the United States.

<sup>2</sup> Section 7 of the act of July 5, 1884 (23 Stat. L., 148), authorized the Secretary of War to prescribe rules and regulations for the use and administration of the Des Moines Rapids Canal, the Saint Marys Falls Canal, and the Louisville and Portland Canal. Section 14 of the act of September 19, 1890 (27 Stat. L., 455), provides that the dry dock constructed at the Des Moines Rapids Canal shall constitute an integral part of the said canal, and makes the provisions of section 7, above cited, applicable to the same. See, also, Dig. J. A. Gen., 534, par. 17.

Regulations to  
be posted.

**815.** Such rules and regulations shall be posted, in conspicuous and appropriate places, for the information of the public; and every person and every corporation which shall knowingly and willfully violate such rules and regulations shall be deemed guilty of a misdemeanor and, on conviction thereof in any district court in the United States within whose territorial jurisdiction such offense may have been committed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment (in the case of a natural person) not exceeding six months, in the discretion of the court.<sup>1</sup> *Sec. 4, act of August 17, 1894 (28 Stat. L., 362).*

#### BRIDGES OVER THE NAVIGABLE WATERS OF THE UNITED STATES.

Par.	Par.
816. Deflection of currents by piers, etc.	818. Penalty for default in making alterations, etc.
817. Obstructions to navigation by bridges.	819. Drawbridges; regulations for use.

Deflection of  
currents by  
piers, etc.

Sec. 2, Aug. 11,  
1888, v. 25, p. 423.

**816.** That whenever complaint shall be made to the Secretary of War that by reason of the placing in any navigable waters of the United States of any bridge pier or abutment, the current of such waters has been so deflected from its natural course as to cause by producing caving of banks or otherwise serious damage or danger to property, it shall be his duty to make inquiry, and if it shall be ascertained that the complaint is well founded, he shall cause the owners or persons operating such bridge to repair such damage or prevent such danger to property by such means as he shall indicate and within such time as he may name, and in default thereof the owners or persons operating such bridge shall be liable in any court of competent jurisdiction to the persons injured in a sum double the amount of said injury: *Provided, however,* That nothing herein contained shall be construed so as to affect any rights of action which may exist at the time of the passage of this act.<sup>2</sup>

Obstructions  
to navigation by  
bridges.

Sec. 9, Aug. 11,  
1888, v. 25, p. 424;  
sec. 4, Sept. 19,  
1890, v. 26, p. 453.

**817.** That whenever the Secretary of War shall have good reason to believe that any railroad or other bridge now constructed, or which may hereafter be constructed over any of the navigable water-ways of the United States is an unreasonable obstruction to the free navigation of such

<sup>1</sup> In view of the decision of the Supreme Court in the case of *The United States v. Eaton* (144 U. S., 677), it may be doubted whether regulations prepared in conformity to this statute could have the penal character which it undertakes to confer. In *Morrill v. Jones* (106 U. S., 466) it was held that the Secretary of the Treasury could not alter or amend a statute by executive regulation: "Much more does this principle apply to a case where it is sought substantially to prescribe a criminal offense by the regulation of a Department." For a contrary opinion, however, see *U. S. v. Ormsbee*, 74 Fed. Rep., 207.

<sup>2</sup> In the case of the *United States v. Rider et al.* (50 Fed. Rep., 406) this section was held to be unconstitutional upon the ground that the powers therein conferred upon the Secretary of War were, by the Federal Constitution, exclusively vested in Congress. See, also, *Field v. Clark*, 143 U. S., 649, 692; *U. S. v. Eaton*, 144 U. S., 627, and note I to paragraph 815, *ante*; *U. S. v. Keokuk and Hamilton Bridge Co.*, 45 Fed. Rep., 178.

waters on account of insufficient height, width of span, or otherwise, or where there is difficulty in passing the draw-opening or the draw-span of such bridge by rafts, steamboats, or other water-craft, it shall be the duty of the said Secretary, first giving the parties reasonable opportunity to be heard, to give notice to the persons or corporations owning or controlling such bridge so to alter the same as to render navigation through or under it reasonably free, easy, and unobstructed; and in giving such notice he shall specify the changes required to be made, and shall prescribe in each case a reasonable time in which to make them. If at the end of such time the alteration has not been made, the Secretary of War shall forthwith notify the United States district attorney for the district in which such bridge is situated, to the end that the criminal proceedings mentioned in the succeeding section may be taken.<sup>1</sup> *Sec. 4, act of September 19, 1890 (26 Stat. L., 453).*

**818.** That if the persons, corporation, or association owning or controlling any railroad or other bridge shall, after receiving notice to that effect as hereinbefore required from the Secretary of War and within the time prescribed by him, willfully fail or refuse to remove the same, or to comply with the lawful order of the Secretary of War in the premises such persons, corporation or association shall be deemed guilty of a misdemeanor and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, and every month such persons, corporation, or association shall remain in default in respect to the removal or alteration of such bridge shall be deemed a new offense, and subject the persons, corporation, or association so offending to the penalties above prescribed.<sup>1</sup> *Sec. 5, act of September 19, 1890 (26 Stat. L., 453).*

**819.** That it shall be the duty of all persons owning, operating, and tending the drawbridges now built, or which may hereafter be built across the navigable rivers and other waters of the United States, to open, or cause to be opened, the draws of such bridges under such rules and regulations as in the opinion of the Secretary of War the public interests require to govern the opening of drawbridges for the passage of vessels and other water-crafts, and such rules and regulations, when so made and published, shall have the force of law. Every such person

Penalty for default in making alterations, etc.

Sec. 10, Aug. 11, 1888, v. 25, p. 425; sec. 5, *ibid.* Sec. 5, Sept. 19, 1890, v. 26, p. 453.

Drawbridges. Regulations for use.

Sec. 5, Aug. 17, 1894, v. 23, p. 362.

<sup>1</sup> In the case of the *United States v. Rider et al.* (50 Fed. Rep., 406) these sections were held to be unconstitutional upon the ground that the powers therein conferred upon the Secretary of War were, by the Federal Constitution, exclusively vested in Congress. See, also, *U. S. v. Eaton*, 144 U. S., 627, and note 2 to paragraph 816, *ante*; *U. S. v. Keokuk and Hamilton Bridge Co.*, 45 Fed. Rep., 178.

who shall willfully fail or refuse to open, or cause to be opened, the draw of any such bridge for the passage of a boat or boats, or who shall unreasonably delay the opening of said draw after reasonable signal shall have been given, as provided in such regulations, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than two thousand dollars nor less than one thousand dollars, or by imprisonment (in the case of a natural person) for not exceeding one year, or by both such fine and imprisonment, in the discretion of the court: *Provided*, That the proper action to enforce the provisions of this section may be commenced before any commissioner, judge, or court of the United States, and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States: *Provided further*, That whenever, in the opinion of the Secretary of War, the public interests require it, he may make rules and regulations to govern the opening of drawbridges for the passage of vessels and other water-crafts, and such rules and regulations, when so made and published, shall have the force of law, and any violation thereof shall be punished as hereinbefore provided.<sup>1</sup> *Sec. 5, act of August 17, 1894 (28 Stat. L., 362).*

## HARBOR LINES.

Par.

820. Harbor-lines may be established.

821. Dredging within harbor lines; wharves; construction of bridges, etc.

Par.

822. Obstructions by wharves, etc.

Harbor-lines may be established.

Sec. 2, Aug. 5, 1886, v. 24, p. 329; sec. 12, Aug. 11, 1888, v. 25, p. 424; sec. 12, Sept. 19, 1890, v. 26, p. 455.

820. Where it is made manifest to the Secretary of War that the establishment of harbor-lines is essential to the preservation and protection of harbors, he may, and is hereby authorized, to cause such lines to be established, beyond which no piers, wharves, bulk-heads or other works shall be extended or deposits made, except under such regulations as may be prescribed from time to time by him; and any person who shall willfully violate the provisions of this section, or any rule or regulation made by the Secretary of War in pursuance of this section, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall

<sup>1</sup> As every bridge constructed over the navigable waters of the United States constitutes an obstruction to the free navigation thereof, and as the Congress is, by the Constitution, made the exclusive judge of the extent and amount of the obstruction that shall be authorized in any case, that body reserves to itself the right to authorize the construction of bridges over such waters. The nearest approach to general legislation on this subject will be found in the act of February 14, 1883 (22 Stat. L., 414), authorizing the construction of bridges across the Ohio River.

be punished by a fine not exceeding one thousand dollars, or imprisonment not exceeding one year, at the discretion of the court for each offense.<sup>1</sup> *Sec. 12, act of September 19, 1890 (26 Stat. L., 455).*

821. That no money appropriated for the improvement of rivers and harbors in this act or hereafter, shall be expended for dredging inside of harbor lines duly established. *Sec. 5, act of July 13, 1892 (27 Stat. L., 111).*

Dredging with-  
in harbor-lines.  
Sec. 5, July 13,  
1892, v. 27, p. 111.

822. That it shall not be lawful to build any wharf, pier, dolphin, boom, dam, weir, breakwater, bulk-head, jetty or structure of any kind outside established harbor-lines, or in any navigable waters of the United States where no harbor-lines are or may be established, without the permission of the Secretary of War, in any port, roadstead, haven, harbor, navigable river, or other waters of the United States, in such manner as shall obstruct or impair navigation, commerce, or anchorage of said waters; and it shall not be lawful hereafter to commence the construction of any bridge, bridge draw, bridge piers and abutments, causeway, or other works over or in any port, roadstead, haven, harbor, navigable river or navigable waters of the United States, under any act of the legislative assembly of any State, until the location and plan of such bridge or other works have been submitted to and approved by the Secretary of War, or to excavate or fill, or in any manner to alter or modify the course, location, condition or capacity of any port, roadstead, haven, harbor, harbor of refuge, or inclosure within the limits of any breakwater, or of the channel of any navigable water of the United States, unless approved and authorized by the Secretary of War: *Provided*, That this section shall not apply to any bridge, bridge draw, bridge piers and abutments the construction of which has been heretofore duly authorized by law, or be so construed as to authorize the construction of any bridge, draw bridge, bridge piers and abutments or other works under an act of the legislature of any State, over or in any stream, port, roadstead, haven or harbor or other navigable water not wholly within the limits of such State.<sup>1</sup> *Sec. 3, act July 13, 1892 (27 Stat. L., 110).*

Obstructions  
by wharves, etc.  
Sec. 7, Sept. 19,  
1890. v. 26, p. 454;  
sec. 7, July 13,  
1892, v. 27, p. 110.

Construction of  
bridges, etc., un-  
der State law.

Secretary of  
War to approve  
plans, etc.  
Altering, etc.,  
ports, etc., for-  
bidden.

Existing law-  
ful bridges, etc.,  
excepted.

No authority  
for bridges under  
State law over  
waters not wholly  
in State.

<sup>1</sup>See note 1 to paragraph 815, *supra*. See, also, Dig. J. A. Gen. 532, par. 10, p. 533, paragraphs 11 and 12.

## INJURIES TO GOVERNMENT WORKS; OBSTRUCTIONS.

Par.	Par.
823. Injuries to Government works in navigable waters.	829. Displacement of tide waters by piers, etc.
824. No unlawful obstructions to be created, etc.	830. Deposits of ballast, stone, earth, etc.; lawful deposits.
825. Enforcement.	831. Obstruction by sunken vessels, craft, etc.; removal.
826. Deposits of refuse, etc., in navigable waters forbidden.	832. Wrecks to be removed by Secretary of War.
827. Masters', pilots', and engineers' licenses revocable.	833. Wrecks may be sold before raising or after removal.
828. Libel against boats making unlawful deposit.	834. Fish ways.

Injuries to Government works, etc., in navigable waters.

Sec. 9, Sept. 19, 1890, v. 26, p. 454.

**823.** That it shall not be lawful for any person or persons to take possession of or make use for any exclusive purpose, or build upon, alter, deface, destroy, injure, obstruct, or in any other manner impair the usefulness of any sea-wall, bulk-head, jetty, dike, levee, wharf, pier, or other work built by the United States in whole or in part, for the preservation and improvement of any of its navigable waters, or to prevent floods, or as boundary marks, tide-gauges, surveying-stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works. *Sec. 9, act of September 19, 1890 (26 Stat. L., 454).*

No unlawful obstructions to be created or continued.

Sec. 10, *ibid.*

**824.** That the creation of any obstruction, not affirmatively authorized by law, to the navigable capacity of any waters, in respect of which the United States has jurisdiction, is hereby prohibited. The continuance of any such obstruction, except bridges, piers, docks and wharves, and similar structures erected for business purposes, whether heretofore or hereafter created, shall constitute an offense and each week's continuance of any such obstruction shall be deemed a separate offense. Every person and every corporation which shall be guilty of creating or continuing any such unlawful obstruction in this act mentioned, or who shall violate the provisions of the last four preceding sections of this act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment (in the case of a natural person) not exceeding one year, or by both such punishments, in the discretion of the court, the creating or continuing of any unlawful obstruction in this act mentioned may be prevented and such obstruction may be caused to be removed by the injunction of any circuit court exercising jurisdiction in any district

Prevention, etc., by injunction.

in which such obstruction may be threatened or may exist; and proper proceedings in equity to this end may be instituted under the direction of the Attorney-General of the United States. *Sec. 10, ibid.*

Procedure.

825. That it shall be the duty of officers and agents having the supervision, on the part of the United States, of the works in progress for the preservation and improvement of said navigable waters, and, in their absence, of the United States collectors of customs and other revenue officers to enforce the provisions of this act by giving information to the district attorney of the United States for the district in which any violation of any provision of this act shall have been committed: *Provided*, That the provisions of this act shall not apply to Torch Lake, Houghton County, Michigan. *Sec. 11, ibid.*

Enforcement.  
*Sec. 11, ibid.*

Torch Lake  
exempted.

826. That it shall not be lawful to place, discharge, or deposit, by any process or in any manner, ballast, refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the waters of any harbor or river of the United States, for the improvement of which money has been appropriated by Congress, elsewhere than within the limits defined and permitted by the Secretary of War; neither shall it be lawful for any person or persons to move, destroy, or injure in any manner whatever any sea-wall, bulk-head, jetty, dike, levee, wharf, pier, or other work built by the United States, in whole or in part, for the preservation and improvement of any of its navigable waters, or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks; any and every such act is made a misdemeanor, and every person knowingly engaged in or who shall knowingly aid, abet, authorize, or instigate a violation of this section shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than twenty-five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one-half of said fine to be paid to the person or persons giving information which shall lead to conviction of this misdemeanor.<sup>1</sup> *Sec. 6, act of August 17, 1894 (28 Stat. L., 363).*

Deposits of refuse, etc., in navigable waters forbidden.

*Sec. 6, Aug. 17, 1894, v. 28, p. 363.*

Injuries to jetties, etc., forbidden.

Penalties.

827. That any and every master, pilot, and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel who may willfully injure or

Masters', pilots', and engineers' licenses revocable.  
*Sec. 7, ibid.*

<sup>1</sup> See, Dig. J. A. Gen., 533, par. 14; 534, par. 15.



destroy any work of the United States contemplated in section six of this Act, or who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit or discharge in any harbor contemplated in section six of this Act, elsewhere than within the limits defined and permitted by the Secretary of War, shall be deemed guilty of a violation of this Act and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section six of this Act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. *Sec. 7, ibid.*

Libel against  
boats making un-  
lawful deposit,  
etc., prohibi-  
tions.  
*Sec. 8, ibid.*

**828.** Any boat, vessel, scow or other craft used or employed in violating any of the provisions of sections six and seven of this Act shall be liable to the pecuniary penalties imposed thereby, and in addition thereto to the amount of the damages done by said boat, vessel, scow, or other craft, which latter sum shall be placed to the credit of the appropriation for the improvement of the harbor in which the damage occurred, and said boat, vessel, scow, or other craft may be proceeded against summarily by way of libel in any district court of the United States having jurisdiction thereof. *Sec. 8, ibid.*

Displacement  
of tide waters by  
piers, etc.  
Compensating  
basin.  
*Sec. 9, ibid.*

**829.** That whenever the Secretary of War grants to any person or persons permission to extend piers, wharves, bulk-heads, or other works, or to make deposits in any tidal harbor or river of the United States beyond any harbor-lines established under authority of the United States, he shall cause to be ascertained the amount of tide water displaced by any such structure or by any such deposits, and he shall, if he deem it necessary, require the parties to whom the permission is given to make compensation for such displacement either by excavating in some part of the harbor, including tide water channels between high and low water mark, to such an extent as to create a basin for as much tide water as may be displaced by such structure or by such deposits, or in any other mode that may be satisfactory to him: *Provided*, That all such dredging or other improvement shall be carried on under the direction of the Secretary of War, and shall in no wise injure any existing channels. *Sec. 9, act of August 17, 1894 (28 Stat. L., 364).*

Deposits of  
ballast, stone,  
earth, etc., for-  
bidden.  
*Sec. 6, Sept. 19,  
1890, v. 26, p. 453.*

**830.** That it shall not be lawful to cast, throw, empty, or unlade, or cause, suffer, or procure to be cast, thrown, emptied, or unladen, either from or out of any ship, vessel, lighter, barge, boat, or other craft, or from the shore, pier, wharf, furnace, manufacturing establishments, or mills of

any kind whatever, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, slag, cinders, ashes, refuse, or other waste of any kind, into any port, road, roadstead, harbor, haven, navigable river, or navigable waters of the United States which shall tend to impede or obstruct navigation, or to deposit or place or cause, suffer, or procure to be deposited or placed, any ballast, stone, slate, gravel, earth, rubbish, wreck, filth, slabs, edgings, sawdust, or other waste in any place or situation on the bank of any navigable waters where the same shall be liable to be washed into such navigable waters, either by ordinary or high tides, or by storms or floods, or otherwise, whereby navigation shall or may be impeded or obstructed: *Provided*, That nothing herein contained shall extend or be construed to extend to the casting out, unloading, or throwing out of any ship or vessel, lighter, barge, boat, or other craft, any stones, rocks, bricks, lime, or other materials used, or to be used, in or toward the building, repairing, or keeping in repair any quay, pier, wharf, weir, bridge, building, or other work lawfully erected or to be erected on the banks or sides of any port, harbor, haven, channel, or navigable river, or to the casting out, unloading, or depositing of any material excavated for the improvement of navigable waters, into such places and in such manner as may be deemed by the United States officer supervising said improvement most judicious and practicable and for the best interests of such improvements, or to prevent the depositing of any substance above mentioned under a permit from the Secretary of War, which he is hereby authorized to grant, in any place designated by him where navigation will not be obstructed thereby. *Sec. 6, act of September 19, 1890 (26 Stat. L., 453).*

Lawful deposits.

Deposits by permit.

#### OBSTRUCTION OF NAVIGATION BY SUNKEN VESSELS, ETC.

**831.** Whenever hereafter the navigation of any river, lake, harbor, or bay, or other navigable water of the United States, shall be obstructed or endangered by any sunken vessel or water-craft, it shall be the duty of the Secretary of War, upon satisfactory information thereof, to cause reasonable notice, of not less than thirty days, to be given, personally or by publication, at least once a week in the newspaper published nearest the locality of such sunken vessel or craft, to all persons interested in such vessel or craft, or in the cargo thereof, of the purpose of said Secretary, unless such vessel or craft shall be removed as soon thereafter as practicable by the parties interested therein, to cause the same to be removed. If such sunken vessel

Obstruction by sunken vessels or water-craft.  
Sec. 4, June 14, 1880, v. 21, p. 197.

Removal.

or craft and cargo shall not be removed by the parties interested therein as soon as practicable after the date of the giving of such notice by publication, or after such personal service of notice, as the case may be, such sunken vessel or craft shall be treated as abandoned and derelict, and the Secretary of War shall proceed to remove the same. Such sunken vessel or craft and cargo and all property therein when so removed shall, after reasonable notice of the time and place of sale, be sold to the highest bidder or bidders for cash, and the proceeds of such sales shall be deposited in the Treasury of the United States to the credit of a fund for the removal of such obstructions to navigation, under the direction of the Secretary of War, and to be paid out for that purpose on his requisition therefor. The provisions of this act shall apply to all such wrecks whether removed under this act or under any other act of Congress. Such sum of money as may be necessary to execute this section of this act is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be paid out on the requisition of the Secretary of War.

*Sec. 4, act of June 14, 1880 (21 Stat. L., 197).*

Wrecks, etc., to  
be removed by  
Secretary of War.  
Sec. 8, Sept. 19,  
1890, v. 26, p. 454.

**832.** That all wrecks of vessels and other obstructions to the navigation of any port, roadstead, harbor, or navigable river, or other navigable waters of the United States, which may have been permitted by the owners thereof or the parties by whom they were caused to remain to the injury of commerce and navigation for a longer period than two months, shall be subject to be broken up and removed by the Secretary of War, without liability for any damage to the owners of the same.<sup>1</sup> *Sec. 8, act of September 19, 1890 (26 Stat. L., 454).*

Wrecks and  
sunken vessels  
may be sold be-  
fore raising or re-  
moval.  
Aug. 2, 1882, v.  
22, p. 208.

**833.** That the power and authority granted to the Secretary of War under and by virtue of section four of the act of Congress approved June fourteenth, eighteen hundred and eighty, relating to wrecks and sunken vessels be, and the same are hereby, enlarged so that the Secretary of War may, in his discretion, sell and dispose of any such sunken

<sup>1</sup> Where a contract was about to be made with a civilian for the removal, from a harbor channel, of certain wrecks, not known to be fully abandoned (and directed by act of Congress to be caused to be removed by the Secretary of War), and it was proposed by the engineer officer in charge to stipulate in the contract that the wrecks when removed should belong to the contractor, *held* that this could not properly be done, the United States having no property in such wrecks (the same not being Government vessels), but simply a right to remove them as constituting obstructions to commerce between the States. (Dig. Opin. J. A. Gen., 447, par. 3.)

In an opinion of the Attorney-General, of May 24, 1877 (15 Opins., 284), it is held that the Secretary of War, where authorized by an appropriation act to improve the navigation of a navigable stream, may cause to be removed wrecks, not yet abandoned but still private property, if he considers them obstructions to navigation. And see his later opinion of April 27, 1880 (16 Opins., 479), as to the authority of the United States to improve navigable rivers to the disregard of individual rights of property in the soil of the bed. See, also, Dig. J. A. Gen., p. 534, par. 16.

craft, vessel, or cargo, or property therein, before the raising or removal thereof, according to the same regulations that are in the said act prescribed for the sale of the same after the removal thereof; and all laws and parts of laws inconsistent herewith are hereby repealed. *Act of August 2, 1882 (22 Stat. L., 208).*

**834.** Whenever the improvements provided for by this act, or those which have heretofore been prosecuted by the United States, or may hereafter be undertaken, shall be found to operate (whether by lock and dam or otherwise), as obstructions to the passage of fish, the Secretary of War may, in his discretion, direct and cause to be constructed practical and sufficient fish-ways, to be paid for out of the general appropriations for the streams on which such fish-ways may be constructed. *Sec. 11, act of August 11, 1888 (25 Stat. L., 425).*

Fish-ways.  
Sec. 11, Aug. 11,  
1888, v. 25, p. 425.

#### DEPOSITS IN NEW YORK HARBOR.

Par.	Par.
835. Deposits in New York Harbor forbidden; penalty.	840. Inspectors.
836. Punishment of officer of boat.	841. Bribery; penalty.
837. Supervisors to designate place of deposit; permits.	842. Return of permits; penalty.
838. Penalty for discharging elsewhere.	843. Disposal of matter dredged.
839. Boats to carry name painted on stern.	844. Supervisor of harbor.
	845. Fishing in ship channels forbidden.
	846. Penalties.
	847. Arrests.

**835.** That the placing, discharging, or depositing, by any process or in any manner, of refuse, dirt, ashes, cinders, mud, sand, dredgings, sludge, acid, or any other matter of any kind, other than that flowing from streets, sewers, and passing therefrom in a liquid state, in the tidal waters of the harbor of New York, or its adjacent or tributary waters, or in those of Long Island Sound, within the limits which shall be prescribed by the supervisor of the harbor, is hereby strictly forbidden, and every such act is made a misdemeanor, and every person engaged in or who shall aid, abet, authorize, or instigate a violation of this section, shall, upon conviction, be punishable by fine or imprisonment, or both, such fine to be not less than two hundred and fifty dollars nor more than two thousand five hundred dollars, and the imprisonment to be not less than thirty days nor more than one year, either or both united, as the judge before whom conviction is obtained shall decide, one half of said fine to be paid to the person or persons giving

New York Harbor; injurious deposits in, forbidden; penalty.

Sec. 3, Aug. 5,  
1886, v. 24, p. 329;  
sec. 1, June 29,  
1888, v. 25, p. 209.

information which shall lead to conviction of this misdemeanor.<sup>1</sup> *Sec. 1, act of June 29, 1888 (25 Stat. L., 209).*

Punishment of  
officer of boat.  
Sec. 2, June 29,  
1888, v. 25, p. 209.

**836.** That any and every master and engineer, or person or persons acting in such capacity, respectively, on board of any boat or vessel, who shall knowingly engage in towing any scow, boat, or vessel loaded with any such prohibited matter to any point or place of deposit, or discharge in the waters of the harbor of New York, or in its adjacent, or tributary waters, or in those of Long Island Sound, or to any point or place elsewhere than within the limits defined and permitted by the supervisor of the harbor hereinafter mentioned, shall be deemed guilty of a violation of this act, and shall, upon conviction, be punishable as hereinbefore provided for offenses in violation of section one of this act, and shall also have his license revoked or suspended for a term to be fixed by the judge before whom tried and convicted. *Sec. 2, act of June 29, 1888 (25 Stat. L., 209).*

Supervisor to  
designate place  
of deposit.

Sec. 3, June 29,  
1888, v. 25, p. 209;  
sec. 3, Aug. 17,  
1894, v. 28, p. 360.

**837.** That in all cases of receiving on board of any scows or boats such forbidden matter or substance as herein described, the owner or master, or person acting in such capacity on board of such scows or boats, before proceeding to take or tow the same to the place of deposit, shall apply for and obtain from the supervisor of the harbor appointed hereunder a permit defining the precise limits within which the discharge of such scows or boats may be made; and it shall not be lawful for the owner or master, or person acting in such capacity, of any tug or towboat to tow or move any scow or boat so loaded with such forbidden matter until such permit shall have been obtained; and every person violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than one thousand nor less than five hundred dollars, and in addition thereto the master of any tug or towboat so offending shall have his license revoked, or suspended for a term to be fixed by the judge before whom tried and convicted. *Sec. 3, act of August 17, 1894 (28 Stat. L., 360).*

Permits.

Penalty.

Penalty for dis-  
charging else-  
where.  
*Ibid.*

**838.** And any deviation from such dumping or discharging place specified in such permit shall be a misdemeanor, and the owner and master, or person acting in the capacity of master, of any scows or boats dumping or discharging such forbidden matter in any place other than that specified in such permit shall be liable to punishment therefor as provided in section one of the said Act of June twenty-ninth, eighteen hundred and eighty-eight; and the owner and master, or person acting in the capacity of master,

<sup>1</sup> See Dig. J. A. Gen., 533, paragraphs 13 and 14, and 20 Opin. Att. Gen., 293.

of any tug or towboat towing such scows or boats shall be liable to equal punishment with the owner and master, or person acting in the capacity of master, of the scows or boats; and, further, every scowman or other employee on board of both scows and towboats shall be deemed to have knowledge of the place of dumping specified in such permit, and the owners and masters, or persons acting in the capacity of masters, shall be liable to punishment, as aforesaid, for any unlawful dumping, within the meaning of this Act or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, which may be caused by the negligence or ignorance of such scowman or other employee; and, further, neither defect in machinery nor avoidable accidents to scows or towboats, nor unfavorable weather, nor improper handling or moving of scows or boats of any kind whatsoever, shall operate to release the owners and masters and employees of scows and towboats from the penalties hereinbefore mentioned. *Ibid.*

839. Every scow or boat engaged in the transportation of dredgings, earth, sand, mud, cellar dirt, garbage, or other offensive material of any description shall have its name or number and owner's name painted in letters and numbers at least fourteen inches long on both sides of the scow or boat; these names and numbers shall be kept distinctly legible at all times, and no scow or boat not so marked shall be used to transport or dump any such material. *Ibid.*

Boats to carry  
name, etc.,  
painted.  
*Ibid.*

840. The supervisor of the harbor of New York, designated as provided in section five of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, is authorized and directed to appoint inspectors and deputy inspectors, and, for the purpose of enforcing the provisions of this Act and of the Act aforesaid, and of detecting and bringing to punishment offenders against the same, the said supervisor of the harbor, and the inspectors and deputy inspectors so appointed by him, shall have power and authority:

Inspectors.

*Ibid.*

First. To arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this section and by the Act of June twenty-ninth, eighteen hundred and eighty-eight, aforesaid, or who may violate any of the provisions of the same: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspectors or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge or court

Duties.  
Arrests.

of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.

Seizure of  
boats.

Second. To go on board of any scow or towboat engaged in unlawful dumping of prohibited material, or in moving the same without a permit as required in this section of this Act, and to seize and hold said boats until they are discharged by action of the commissioner, judge, or court of the United States before whom the offending persons are brought.

Custody of wit-  
ness.

Third. To arrest and take into custody any witness or witnesses to such unlawful dumping of prohibited material, the said witnesses to be released under proper bonds.

Accompanying  
towboats.

Fourth. To go on board of any towboat having in tow scows or boats loaded with such prohibited material, and accompany the same to the place of dumping, whenever such action appears to be necessary to secure compliance with the requirements of this Act and of the Act aforesaid.

Inspecting gas,  
etc., works.

Fifth. To enter gas and oil works and all other manufacturing works for the purpose of discovering the disposition made of sludge, acid, or other injurious material, whenever there is good reason to believe that such sludge, acid, or other injurious material is allowed to run into the tidal waters of the harbor in violation of section one of the aforesaid Act of June twenty-ninth, eighteen hundred and eighty-eight. *Ibid.*

Bribery; pen-  
alty.  
*Ibid.*

841. Every person who, directly or indirectly, gives any sum of money or other bribe, present, or reward or makes any offer of the same to any inspector, deputy inspector, or other employee of the office of the supervisor of the harbor with intent to influence such inspector, deputy inspector, or other employee to permit or overlook any violation of the provisions of this section or of the said Act of June twenty-ninth, eighteen hundred and eighty-eight, shall, on conviction thereof, be fined not less than five hundred dollars nor more than one thousand dollars, and be imprisoned not less than six months nor more than one year. *Ibid.*

Return of per-  
mits.  
*Ibid.*

842. Every permit issued in accordance with the provisions of this section of this Act which may not be taken up by an inspector or deputy inspector shall be returned within forty-eight hours after issuance to the office of the supervisor of the harbor; such permit shall bear an indorsement by the master of the towboat, or the person acting in such capacity, stating whether the permit has been used, and if so the time and place of dumping. Any person violating

Penalty.

the provisions of this section shall be liable to a fine of not more than five hundred dollars nor less than one hundred dollars. *Ibid.*

843. That all mud, dirt, sand, dredgings, and material of every kind and description whatever taken, dredged, or excavated from any slip, basin, or shoal in the harbor of New York, or the waters adjacent or tributary thereto, and placed on any boat, scow, or vessel for the purpose of being taken or towed upon the waters of the harbor of New York to a place of deposit, shall be deposited and discharged at such place or within such limits as shall be defined and specified by the supervisor of the harbor, as in the third section of this act prescribed, and not otherwise. Every person, firm, or corporation being the owner of any slip, basin, or shoal, from which such mud, dirt, sand, dredgings, and material shall be taken, dredged, or excavated, and every person, firm, or corporation in any manner engaged in the work of dredging or excavating any such slip, basin, or shoal, or of removing such mud, dirt, sand, or dredgings therefrom, shall severally be responsible for the deposit and discharge of all such mud, dirt, sand, or dredgings at such place or within such limits so defined and prescribed by said supervisor of the harbor; and for every violation of the provisions of this section the person offending shall be guilty of an offense against this act, and shall be punished by a fine equal to the sum of five dollars for every cubic yard of mud, dirt, sand, dredgings, or material not deposited or discharged as required by this section. Any boat or vessel used or employed in violating any provision of this act, shall be liable to the pecuniary penalties imposed thereby, and may be proceeded against summarily by way of libel in any district court of the United States, having jurisdiction thereof.<sup>1</sup> *Sec. 4, act of June 29, 1888 (25 Stat. L., 210).*

Disposal of  
matter dredged.  
Sec. 4, June 29,  
1888, v. 25, p. 210.

844. That a line officer of the Navy shall be designated by the President of the United States as supervisor of the harbor, to act under the direction of the Secretary of War in enforcing the provisions of this act, and in detecting offenders against the same. This officer shall receive the sea-pay of his grade, and shall have personal charge and supervision under the Secretary of War, and shall direct

Supervisor of  
the harbor.  
Sec. 5, *ibid.*

<sup>1</sup> Where ashes are dumped, in an unlawful place, from the deck of an ocean steamer by her firemen, presumably acting under orders from some superior officer of the steamer, the steamer at the time being engaged in performing a freighting voyage to sea, and the dumping of ashes accumulated at her furnace being a necessary incident of her navigation, the statute takes effect and renders the steamer liable as having herself violated the law. *The Bombay*, 46 Fed. Rep., 665. See, also, case of the *Anjer Head*, 46 Fed. Rep., 664. See, also, *Dig. J. A. Gen.*, 533, par. 14, and 20 *Opin. Att. Gen.*, 293.



the patrol boats and other means to detect and bring to punishment offenders against the provisions of this act.  
*Sec. 5, ibid.*

Fishing, etc.,  
in ship channels  
forbidden.  
*Sec. 2, Aug. 17,*  
*1894, v. 28, p. 360.*

**845.** It shall be unlawful for any person or persons to engage in fishing or dredging for shell fish in any of the channels leading to and from the harbor of New York, or to interfere in any way with the safe navigation of those channels by ocean steamships and ships of deep draft.

Penalties.

**846.** Any person or persons violating the foregoing provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by fine or imprisonment, or both, such fine to be not more than two hundred and fifty dollars nor less than fifty dollars, and the imprisonment to be not more than six months nor less than thirty days, either or both united, as the judge before whom conviction is obtained shall decide. *Ibid.*

*Ibid.*

Arrests.

**847.** It shall be the duty of the United States Supervisor of the harbor to enforce this Act, and the deputy inspectors of the said supervisor shall have authority to arrest and take into custody, with or without process, any person or persons who may commit any of the acts or offenses prohibited by this Act: *Provided*, That no person shall be arrested without process for any offense not committed in the presence of the supervisor or his inspector or deputy inspectors, or either of them: *And provided further*, That whenever any such arrest is made the person or persons so arrested shall be brought forthwith before a commissioner, judge, or court of the United States for examination of the offenses alleged against him; and such commissioner, judge, or court shall proceed in respect thereto as authorized by law in case of crimes against the United States.  
*Sec. 2, act of August 17, 1894 (28 Stat. L., 360).*

Process.

Proceedings.

#### ANCHORAGE GROUNDS.

Par.

848-849. Anchorage grounds in Chicago Harbor.

850-851. Anchorage grounds in New York Harbor.

852. Harbor regulations for the District of Columbia.

Par.

853. Unlawful deposits forbidden.

854. Penalty.

855. Limitation.

#### ANCHORAGE GROUNDS IN CHICAGO HARBOR.

Chicago, Ill.  
Anchorage  
grounds, etc., to  
be established  
by Secretary of  
the Treasury.  
*Feb. 6, 1893, v.*  
*27, p. 431.*

**848.** That the Secretary of the Treasury be authorized and directed to define and establish anchorage grounds for vessels in the harbors of Chicago, and waters of Lake Michigan adjacent thereto, to adopt suitable rules and regulations in relation to the same, and also to adopt suitable

rules and regulations governing the use of marked inshore channels in Lake Michigan in front of the city of Chicago, and to take all necessary measures for the proper enforcement of such rules and regulations. *Act of February 6, 1893 (27 Stat. L., 431).*

**849.** That in the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district within which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury. *Sec. 2, ibid.*

Penalty for violation of rules.  
Sec. 2, *ibid.*

#### ANCHORAGE GROUNDS IN NEW YORK HARBOR.

**850.** That the Secretary of the Treasury is authorized, empowered, and directed to define and establish an anchorage ground for vessels in the bay and harbor of New York, and in the Hudson and East rivers, to adopt suitable rules and regulations in relation thereto, and to take all necessary measures for the proper enforcement of such rules and regulations. *Act of May 16, 1888 (25 Stat. L., 151).*

Anchorage ground to be established by the Secretary of the Treasury.  
May 16, 1888, v. 25, p. 151.

**851.** That in the event of the violation of any such rules or regulations by the owner, master, or person in charge of any vessel, such owner, master, or person in charge of such vessel shall be liable to a penalty of one hundred dollars, and the said vessel may be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel for the recovery of the same in any United States district court for the district in which such vessel may be, and in the name of the officer designated by the Secretary of the Treasury. *Sec. 2, ibid.*

Penalty.  
Sec. 2, *ibid.*

#### HARBOR REGULATIONS FOR THE DISTRICT OF COLUMBIA.

**852.** That it shall be unlawful for any owner or occupant of any wharf or dock, any master or captain of any vessel, or any person or persons to cast, throw, drop, or deposit any ballast, dirt, oyster shells, or ashes in the water in any part of the Potomac River or its tributaries in the District of Columbia, or on the shores of said river below high-water mark, unless for the purpose of making a wharf, after permission has been obtained from the Commissioners of the District of Columbia for that purpose, which wharf shall be

Harbor regulations for the District of Columbia.  
May 19, 1896, v. 29, p. 126.

sufficiently inclosed and secured so as to prevent injury to navigation. *Act of May 19, 1896 (29 Stat. L., 126).*

Unlawful de-  
posits forbidden.  
Sec. 2, *ibid.*

853. That it shall be unlawful for any owner or occupant of any wharf or dock, any captain or master of any vessel, or any other person or persons to cast, throw, deposit, or drop in any dock or in the waters of the Potomac River or its tributaries in the District of Columbia any dead fish, fish offal, dead animals of any kind, condemned oysters in the shell, watermelons, cantaloupes, vegetables, fruits, shavings, hay, straw, ice, snow, filth, or trash of any kind whatsoever. *Sec. 2, ibid.*

Penalty.  
Sec. 3, *ibid.*

854. That any person or persons violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof in the police court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding six months, or by both such punishments, in the discretion of the court. *Sec. 3, ibid.*

Limitation.  
Sec. 4, *ibid.*

855. That nothing in this act contained shall be construed to interfere with the work of improvement in or along the said river and harbor, under the supervision of the United States Government. *Sec. 4, ibid.*

## CHAPTER XXII.

### THE ORDNANCE DEPARTMENT—THE BOARD OF ORDNANCE AND FORTIFICATION, ARMS, ARMORIES, AND ARSENALS.

#### THE ORDNANCE DEPARTMENT.

Par.  
856. The Ordnance Department;  
composition; examinations.  
857. Promotions; examinations for  
promotion.  
858. Duties of Chief of Ordnance.  
859. Issues.  
860. Depots.  
861. Semiannual reports.  
862. Pay of principal assistant to  
Chief of Ordnance.  
863. Rank of ordnance storekeep-  
ers.  
864. Storekeepers may act as pay-  
masters.  
865. Ordnance-sergeants.  
866. How selected.  
867. Enlisted men of ordnance.

Par.  
868. Detail of artificers.  
869. Returns of ordnance.  
870. Reports of damages.  
871. Cost of repairs to be de-  
ducted, etc.  
872. Purchases not exceeding \$200  
in amount; how made.  
873. Sale of unserviceable ord-  
nance stores.  
874. Exchange or sale of unserv-  
iceable powder and shot.  
875. Sale of useless ordnance; pro-  
ceeds available for pur-  
chases of new material.  
876. Loans or gifts of condemned  
ordnance authorized.

**856.** That the Ordnance Department shall consist of one Chief of Ordnance, with the rank, pay, and emoluments of a brigadier-general; three colonels, four lieutenant-colonels, ten majors, twenty captains, sixteen first lieutenants; and all vacancies which may hereafter exist in the grade of first lieutenant in said Department shall be filled by transfer from the line of the Army:<sup>1</sup> *Provided*, That no appointment or promotion in said Department shall hereafter be made until the officer or person so appointed [or promoted] shall have passed a satisfactory examination before a board of ordnance-officers senior to himself.<sup>1</sup> *Sec. 5, act of June 23, 1874 (18 Stat. L., 245).*

Ordnance De-  
partment; com-  
position.  
Feb. 8, 1815, v.  
3, p. 203.  
Sec. 5, June 23,  
1874, v. 18, p. 245.  
Sec. 1159, R. S.

Examinations.

<sup>1</sup> The Department was reorganized by section 5 of the act of June 23, 1874 (18 Stat. L., 245), which replaced the provisions of section 1159, Revised Statutes, in respect to the same subject. See, also, Scott's Digest, par. 401, notes.

Examinations for promotion in this Department are now regulated by the acts of October 1, 1890 (26 Stat. L. 562), and July 27, 1892 (27 Stat. L., 276).

Vacancies in the lowest grade in the Ordnance Department are filled by the appointment of officers from the line of the Army who have passed a satisfactory examination of the kind prescribed in this section. The conditions of appointment and examination are set forth in the following paragraphs of the Army Regulations of 1895:

Vacancies in the grade of first lieutenant of ordnance are filled by transfer from

Examination  
of certain officers  
of Engineers and  
Ordnance.

Sec. 2, July 27,  
1892, v. 27, p. 276.

**857.** That the examination of officers of the Corps of Engineers and Ordnance Department, who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the war of the rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps or department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers and Ordnance Department, respectively.<sup>1</sup> *Sec. 2, act of July 27, 1892 (27 Stat. L., 276).*

Duties of Chief  
of Ordnance.

Feb. 8, 1815, c.  
38, s. 8, v. 3, p. 203.  
Sec. 1164, R. S.

**858.** It shall be the duty of the Chief of Ordnance to furnish estimates, and, under the direction of the Secretary of War, to make contracts and purchases, for procuring the necessary supplies of ordnance and ordnance stores, for the use of the armies of the United States; to direct the inspection and proving of the same, and to direct the construction of all cannon and carriages, ammunition-wagons, traveling forges, artificers' wagons, and of every implement and apparatus for ordnance, and the preparation of all kinds of ammunition and ordnance stores constructed or prepared for said service.

Issues.

Feb. 8, 1815, c.  
38, s. 5, v. 3, p. 203.  
Sec. 1166, R. S.

**859.** The Chief of Ordnance, or the senior officer of that corps for any district, shall execute all orders of the Secretary of War, and, in time of war, the orders of any general or field officer commanding an army, garrison, or detachment, for the supply of all ordnance and ordnance stores for garrison, field, or siege service.

Depots.

Feb. 8, 1815, c.  
38, s. 9, v. 3, p. 204.  
Sec. 1165, R. S.

**860.** The Chief of Ordnance, under the direction of the Secretary of War, may establish depots of ordnance and ordnance stores in such parts of the United States, and in such numbers, as may be deemed necessary.

the line of the Army. To be eligible, an officer must be less than 30 years of age, must have served at least two years as an officer in the line of the Army, and must have passed a satisfactory examination before a board of ordnance officers. Applications for examination will be made to the Adjutant-General of the Army. (Par. 1489, A. R., 1895.)

Should the applicant be directed to appear before a board, he will, after passing a satisfactory preliminary examination as to his physical qualifications, be examined upon the following, or such other subjects as the Secretary of War may prescribe: Gun construction, present and past state of the art; ballistics and ballistic machines; types of projectiles and gun carriages; gunpowder, types and modes of manufacture; small arms and machine guns; employment of artillery, kinds of fire, etc.; armored defenses; materials for ordnance construction and processes of manufacture; torpedoes for coast defenses; general principles of mechanics. (Par. 1490, *ibid.*)

The acts of June 23, 1874, March 3, 1875, and June 26, 1876, reorganizing the staff corps, provide "that no officer now in service shall be reduced in rank or mustered out by reason of any provisions of law therein made reducing the number of officers in any department or corps of the Army." There are now in service, in excess of the number allowed by these acts, one military storekeeper, captain, in the Quartermaster's Department, and three ordnance storekeepers, captains, in the Ordnance Department. By the act of May 1, 1882 (22 Stat. L., 52), the appointment of an additional ordnance storekeeper was authorized. By the act of June 6, 1896 (29 Stat. L., 258), the ordnance storekeeper on duty in Washington as disbursing officer and assistant to the Chief of Ordnance was given the rank of major.

Promotions to the grade of colonel in this Department are made by seniority, subject, in the grades of captain and major, to the examinations required by the acts of October 1, 1890 (26 Stat. L., 562), and July 27, 1892 (27 Stat. L., 276). Officers of the Ordnance Department after fourteen years' continuous service as lieutenants are entitled to the benefits of section 1207, Revised Statutes. (See paragraph 700, *ante.*)

<sup>1</sup>For other statutory provisions respecting examinations, see paragraph 856, *ante*, and the chapters entitled THE STAFF DEPARTMENTS and THE ENGINEER DEPARTMENT.

**861.** The Chief of Ordnance shall, half-yearly, or oftener if so directed, make a report to the Secretary of War of all the officers and enlisted men in his department of the service, and of all ordnance and ordnance stores under his control.

Semiannual reports.  
Feb. 8, 1815, c. 38, s. 8, v. 3, p. 204;  
Feb. 27, 1877, c. 69, v. 19, p. 242.  
Sec. 1167, R. S.

**862.** The principal assistant in the Ordnance Bureau shall receive a compensation, including pay and emoluments, not exceeding that of a major of ordnance.

Pay of principal assistant to Chief of Ordnance.  
Feb. 27, 1877, v. 19, p. 243.  
Sec. 1279, R. S.

**863.** The ordnance store-keeper at Springfield armory shall have the rank of major of cavalry and the ordnance store-keeper now on duty in Washington as disbursing officer and assistant to the Chief of Ordnance, United States Army, shall hereafter have the rank of major. *Act of June 6, 1896 (29 Stat. L., 260.)* All other ordnance store-keepers shall have the rank of captain of cavalry

Rank of ordnance store-keepers.  
Mar. 2, 1867, c. 145, s. 7, v. 14, p. 423; Mar. 3, 1869, c. 124, s. 6, v. 15, p. 318; June 23, 1874, c. 458, ss. 5, 8, v. 18, p. 245; June 6, 1896, v. 29, p. 260.  
Sec. 1159, R. S.

**864.** Any number, not exceeding six, of the ordnance storekeepers may be authorized to act as paymasters at armories and arsenals.

Storekeepers may act as paymasters.  
Sec. 1161, R. S.

#### ENLISTED MEN OF ORDNANCE.

**865.** There shall be an ordnance-sergeant for each military post, whose duty it shall be to take care of the ordnance, arms, ammunition, and other military stores at such post, under the direction of the commanding officer, and according to regulations prescribed by the Secretary of War.<sup>1</sup>

Ordnance-sergeants; number and duty.  
July 28, 1866, c. 299, s. 7, v. 14, p. 333; Apr. 5, 1832, c. 67, s. 2, v. 4, p. 504.  
Sec. 1109, R. S.

**866.** Ordnance-sergeants shall be selected by the Secretary of War from the sergeants of the line who shall have served faithfully for eight years, including four years in the grade of non-commissioned officer, and shall be assigned to their stations by him.

How selected.  
Apr. 5, 1832, c. 67, s. 2, v. 4, p. 504; Feb. 27, 1877, v. 19, p. 242.  
Sec. 1110, R. S.

**867.** The Chief of Ordnance may enlist as many sergeants of ordnance, corporals of ordnance, and first and second class privates of ordnance, as the Secretary of War may direct.

Enlisted men of ordnance.  
June 18, 1846, c. 29, s. 11, v. 9, p. 18; July 5, 1862, c. 133; s. 3, v. 12, p. 508.  
June 23, 1874, c. 458, s. 5, v. 18, p. 245; Feb. 27, 1877, c. 69, v. 19, p. 242.  
Sec. 1162, R. S.

**868.** The Chief of Ordnance, subject to the approval of the Secretary of War, shall organize and detail to regiments, corps, or garrisons such numbers of ordnance enlisted men, furnished with proper tools, carriages, and apparatus, as may be necessary, and shall make regulations for their government.

Detail of artificers.  
Feb. 8, 1815, c. 38, s. 4, v. 3, p. 203; Feb. 27, 1877, c. 69, v. 19, p. 242.  
Sec. 1163, R. S.

<sup>1</sup>For pay and allowances of ordnance-sergeants, see the chapters entitled THE PAY DEPARTMENT, THE QUARTERMASTER'S DEPARTMENT, and THE SUBSISTENCE DEPARTMENT.

## ACCOUNTABILITY FOR PROPERTY.

**Returns of 869.** The Chief of Ordnance shall, half-yearly, or oftener ordnance.

Feb. 8, 1815, c. if so directed, make a report to the Secretary of War of all 38, s. 8, v. 3, p. 204;  
Feb. 27, 1877, c. 69, the officers and enlisted men in his department of the v. 19, p. 242.

**Sec. 1167, R. S.** service, and of all ordnance and ordnance stores under his control. Every officer of the Ordnance Department, every ordnance-store keeper, every post ordnance sergeant, each keeper of magazines, arsenals, and armories, every assistant and deputy of such, and all other officers, agents, or persons who shall have received or may be entrusted with any stores or supplies, shall quarterly, or oftener if so directed, and in such manner and on such forms as may be directed or prescribed by the Chief of Ordnance, make true and correct returns to the Chief of Ordnance of all ordnance-arms, ordnance-stores, and all other supplies and property of every kind, received by or intrusted to them and each of them, or which may in any manner come into their and each of their possession or charge. The Chief of Ordnance, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his department a system of rules and regulations for the government of the Ordnance Department, and of all persons in said department, and for the safe-keeping and preservation of all ordnance property of every kind, and to direct and prescribe the time, number, and forms of all returns and reports, and to enforce compliance therewith.<sup>1</sup>

**Reports of 870.** Every officer commanding a regiment, corps, garri- damages.

Feb. 8, 1815, c. son, or detachment shall make, once every two months, or 38, s. 7, v. 3, p. 204.  
Feb. 27, 1877, c. 69, oftener if so directed, a report to the Chief of Ordnance,

**Sec. 1220, R. S.** stating all damages to arms, equipments, and implements belonging to his command, noting those occasioned by negligence or abuse, and naming the officer or soldier by whose negligence or abuse the said damages were occasioned.

**Cost of repairs 871.** The cost of repairs or damages done to arms, equip- to be deducted ments, or implements, shall be deducted from the pay of from pay of offi- cer or soldier.

**Sec. 1303, R. S.** any officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.

## PURCHASES.

**Purchases not 872.** Purchase of ordnance and ordnance stores and sup- exceeding \$200 in plies may be made by the Ordnance Department in open amount; how market, in the manner common among business men, when made.  
Aug. 6, 1895, v. the aggregate of the amount required does not exceed two 28, p. 242.

<sup>1</sup> For statutory provisions on the subject of property returns, see the act of March 29, 1894 (28 Stat. L., 42); see also the chapter entitled THE PUBLIC PROPERTY.

hundred dollars, but every such purchase shall be immediately reported to the Secretary of War.<sup>1</sup> *Act of August 6, 1895 (28 Stat. L., 242).*

SALES OF OBSOLETE, UNSERVICEABLE, AND UNSUITABLE MATERIAL.

**873.** That from and after the passage of this act the Secretary of War be, and he is hereby, authorized and directed to be caused to be sold in such manner, and at such times and places, and in such quantities, as shall most conduce to the interest of the United States, all obsolete and unserviceable ammunition and leaden balls, and the surplus of pig lead in excess of two thousand tons now stored in the various arsenals of the United States, and to cause the net proceeds of such sale, after paying all costs and expenses of breaking up and preparing said ammunition for sale, and all the necessary expenses of such sale, including the cost of transportation to the place of sale, to be covered into the Treasury of the United States with full accounts of said expenses.<sup>2</sup> *Act of June 22, 1874 (18 Stat. L., 200).*

Sale of unserviceable ordnance stores.  
June 22, 1874, v. 18, p. 200.

**874.** And the Secretary of War is hereby authorized, in his discretion, to exchange the unserviceable and unsuitable powder and shot on hand for new powder and projectiles, or to sell the same and purchase similar articles with the proceeds of the sales; and he shall make statement of his action under this provision in his next annual report. *Act of March 3, 1881 (21 Stat. L., 468).*

Exchange or sale of unserviceable powder and shot.  
Mar. 3, 1881, v. 21, p. 468.

**875.** That the Secretary of the Navy is authorized to dispose of the useless ordnance material on hand at public sale according to law. \* \* \* And in the case of the sale of like materials in the War Department, the proceeds of which shall be turned into the Treasury, an amount equal to the net proceeds of such sale is hereby appropriated for the purpose of procuring a supply of material adapted in manufacture and calibre to the present wants of the war service: And there shall be expended in the War Department

Sale of useless ordnance.

Proceeds available for purchase of new material.  
Mar. 3, 1875, v. 18, p. 388.

<sup>1</sup>For general provisions respecting the procurement of supplies and services, see the chapter entitled CONTRACTS AND PURCHASES. See also, paragraphs 877-891, post. For a rule, similar to the above, in respect to purchases in open market, see the act of July 16, 1892 (27 Stat. L., 182).

<sup>2</sup>For rules respecting the disposition of damaged stores or stores that are unsuitable for the public service, see the chapter entitled THE PUBLIC PROPERTY; for rules as to the disposition of the proceeds of the sale of condemned property, see the chapter entitled THE TREASURY DEPARTMENT.

CLERICAL SERVICES.

The employment of clerical services in the Ordnance Department is regulated in the annual acts of appropriation. The amount to be expended for such services was fixed at \$65,000 by the acts of March 3, 1883, July 5, 1884, and March 3, 1885; at \$60,000 by the acts of June 20, 1886, February 9, 1887, September 22, 1888, March 2, 1889, June 13, 1890, February 24, 1891, July 16, 1892, February 27, 1893, August 6, 1894, February 12, 1895, and March 16, 1896.





ment, under this provision, not more than seventy-five thousand dollars in any one year.<sup>1</sup> *Act of March 3, 1875 (18 Stat. L., 388).*

Loans or gifts  
of condemned  
ordnance, etc.,  
authorized.  
May 22, 1896, v.  
29, p. 133.

**876.** That the Secretary of War and the Secretary of the Navy are each hereby authorized, in their discretion, to loan or give to soldiers' monument associations, posts of the Grand Army of the Republic, and municipal corporations condemned ordnance, guns, and cannon balls which may not be needed in the service of either of said Departments. Such loan or gift shall be made subject to rules and regulations covering the same in each Department, and the Government shall be at no expense in connection with any such loan or gift. *Act of May 22, 1896 (29 Stat. L., 133).*

#### THE BOARD OF ORDNANCE AND FORTIFICATION.

Par.	Par.
877. Board of Ordnance and Fortification; duties; expenditures.	885. Right to use inventions.
878. Additional civilian member.	886. Contracts for steel guns of large caliber authorized.
879. Annual report.	887. Contracts for breach-loading mortar of mortar steel authorized.
880. Investigations by the Board.	888. Contracts for steel forgings authorized.
881. Proving ground at Sandy Hook.	889. Caliber, etc., of guns required for service to be determined by Secretary of War.
882. Expenses of officers, etc., at proving ground.	890. Public tests of rifled cannon.
883. Purchases to be of American manufacture; exception.	891. Sale of smoothbore cannon for experimental purposes.
884. No member to be interested in device, etc., before Board.	

Board of Ordnance and Fortification.  
Sept. 22, 1888, v.  
25, p. 489.

**877.** That the appropriations hereinafter provided for shall be available until expended and shall be expended under the direct supervision of a board to consist of the commanding General of the Army, an officer of Engineers, an officer of Ordnance, and an officer of Artillery, to be selected by the Secretary of War, to be called and known as the Board of Ordnance and Fortification; and said Board shall be under the direction of the Secretary of War and subject to his supervision and control in all respects, and shall have power to provide suitable regulations for the inspection of guns and materials at all stages of manufacture to the extent necessary to protect fully the interests of the United States, and generally to provide such regulations concerning matters within said Board's operations as shall be necessary to carry out to the best advantage all duties committed to its charge: *Provided*, That subject to

Duties.

<sup>1</sup> The authority conferred by this statute was repealed, as to the Secretary of the Navy, by section 2 of the act of August 5, 1882 (22 Stat. L., 284).

the foregoing provisions the expenditure shall be made by the several bureaus of the War Department having jurisdiction of the same under existing law. *Act of September 22, 1888 (25 Stat. L., 489).* Expenditures.

878. And one additional member shall be added to said Board of Ordnance and Fortification who shall be a civilian and not an ex-officer of the regular Army or Navy, and he shall be nominated by the President, and by and with the advice and consent of the Senate, appointed, and shall be paid a salary of five thousand dollars per annum and actual traveling expenses when traveling on duty. *Act of February 24, 1891 (26 Stat. L., 769).* Additional civilian member.  
Feb. 24, 1891, v. 26, p. 769.

879. That the Board of Ordnance and Fortification shall make an annual report to Congress through the Secretary of War, on the first Monday in December in each year, showing the general operations of the Board and shall give a detailed statement of all contracts, allotments and expenditures made by the Board; the first of these reports to cover these subject matters from the beginning of the operations by the Board until the first report which they shall make. *Ibid.* Annual report.  
*Ibid.*

880. The Board is authorized to make all needful and proper purchases, investigations, experiments, and tests, to ascertain with a view to their utilization by the Government, the most effective guns, including multicharge guns and the conversion of Parrott and other guns on hand, small arms, cartridges, projectiles, fuzes, explosives, torpedoes, armor-plates, and other implements and engines of war; and the Secretary of War is hereby authorized to purchase or cause to be manufactured, such guns, carriages, armor-plates, and other war materials and articles as may, in the judgment of said Board, be necessary in the proper discharge of the duty herein devolved upon them: *Provided*, That the amount expended and liabilities incurred in such purchases, investigations, experiments, and tests shall not exceed five hundred thousand dollars which sum is hereby appropriated: *Provided further*, That said Board shall test, and if found satisfactory, shall purchase two breach loading field guns of three and two tenths inch bore of aluminum bronze.<sup>1</sup> *Sec. 2, act of September 22, 1888 (25 Stat. L., 491).* Investigations by the Board.  
Sec. 2, Sept. 22, 1888, v. 25, p. 491.  
  
Aluminum bronze guns.

<sup>1</sup>By several acts of appropriation the powers of the Board of Ordnance and Fortification have been reduced and defined. By the act of February 24, 1891 (26 Stat. L., 767), the appropriations of the Engineer Department, for gun and mortar batteries and for sites of fortifications, have been withdrawn from the supervision of the Board; by the act of July 23, 1892 (27 Stat. L., 260), all regular appropriations of the Ordnance Department for the armament of fortifications were similarly withdrawn from its supervision. See, also, the acts of February 18, 1893 (27 Stat. L., 461), August 1, 1894 (28 *Ibid.*, 215), March 2, 1895 (*Ibid.*, 706), and June 6, 1896 (29 *Ibid.*, 259), for similar provisions of statutes in which the Board is specially charged with the supervision of stated funds and with the general expenditure of funds appropriated for experimental purposes.

Provingground  
at Sandy Hook.  
Mar. 2, 1889, v.  
25, p. 833.

**881.** The Board of Ordnance and Fortification is hereby directed to examine and report upon a site or sites for ordnance testing and proving ground to be used in the testing and proving of heavy ordnance, having in view in the selection of said site or sites their accessibility by land and water, means of transportation, and suitability for the purpose intended, and also the actual and reasonable cost, and value of the land embraced in said site or sites and the least sum for which the same can be procured. Said Board shall report thereon to the Secretary of War, to be submitted to Congress at its next session; and in case the said Board shall select a site or sites and recommend their purchase, the Secretary of War is hereby authorized to secure written proposals for the sale of the land so recommended, until such time as Congress may act upon the recommendation of said Board and of the Secretary of War.<sup>1</sup> *Act of March 2, 1889 (25 Stat. L., 833).*

Expenses of  
officers, etc., at  
proving ground.  
Feb. 24, 1891, v.  
26, p. 768.

**882.** For payment of the necessary expenses of the Board, including a per diem allowance to each officer detailed to serve thereon when employed on duty away from his permanent station, of two dollars and fifty cents a day, \* \* \* one hundred thousand dollars.<sup>2</sup> *Act of August 1, 1894 (28 Stat. L., 215).*

Purchases to  
be of American  
manufacture.  
Exception.  
July 23, 1892, v.  
27, p. 260.

**883.** That all material purchased under the foregoing provisions of this act shall be of American manufacture, except in cases when, in the judgment of the Secretary of War, it is to the manifest interest of the United States to make purchases in limited quantities abroad, which material shall be admitted free of duty.<sup>1</sup> *Act of July 23, 1892 (27 Stat. L., 260).*

<sup>1</sup>To enable the Secretary of War, in his discretion, to purchase the land adjoining the Government reservation at Sandy Hook, New Jersey, now belonging to the grantees of the Highland Beach Association of New Jersey, together with the right of way from said land to the main line of the Central Railroad Company of New Jersey, together with the rails, ties, switches, and all the railroad equipment on said lands, twenty-five thousand dollars, or so much thereof as may be necessary. *Act of July 23, 1892 (27 Stat. L., 259).*

That the President is hereby authorized to appoint a board, to consist of three officers of the Army and three officers of the Navy, who shall examine and report to the Secretary of War for transmission to Congress for its consideration what, in their opinion, is the most suitable site on the Pacific Coast or on the rivers or other waters thereof, for the erection of a plant for finishing and assembling the parts of heavy guns and other ordnance for the use of the Army and Navy. That for the payment of the necessary expenses of the board to be appointed under the foregoing provisions the sum of two thousand five hundred dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated. *Act of July 23, 1892 (27 Stat. L., 259).*

<sup>2</sup>For a similar provision see the acts of February 24, 1891 (26 Stat. L., 763); July 23, 1892 (27 Stat. L., 259); February 18, 1893 (27 Stat. L., 460); March 2, 1895 (28 Stat. L., 706), and June 6, 1896 (29 Stat. L., 259). The several acts of appropriation since that of July 23, 1892, contain provisions for similar allowances to each officer detailed to serve on the Board of Ordnance and Fortification when on duty away from his permanent station. The acts of appropriation since that of August 4, 1894, contain provisions for the necessary traveling expenses of the civilian member of the board when traveling on duty as contemplated in the act of February 24, 1891.

884. That hereafter no person shall be a member of or serve on said Board who has been or is in any manner interested in any invention, device, or patent which, or anything similar to which, has been considered or may be considered by or come before said Board for test or adoption; or who is connected with or in the employ of any manufacturer who has or shall have contracts with the United States for any ordnance materials. *Act of February 18, 1893 (27 Stat. L., 461).*

No member to be interested in device, etc., before Board. Feb. 18, 1893, v. 27, p. 461.

885. That before any money shall be expended in the construction or test of any gun, gun carriage, ammunition, or implements under the supervision of the said Board, the Board shall be satisfied, after due inquiry, that the Government of the United States has a lawful right to use the inventions involved in the construction of such gun, gun carriage, ammunition, or implements, or that the construction or test is made at the request of a person either having such lawful right or authorized to convey the same to the Government. *Act of August 1, 1894 (28 Stat. L., 215).*

Right to use inventions. Aug. 1, 1894, v. 28, p. 215

886. That the Secretary of War is hereby authorized and directed to purchase under contract, after due advertisement inviting proposals, and at prices which the Board of Ordnance and Fortification shall adjudge to be fair to the manufacturer and for the interest of the United States, twenty-five eight-inch, fifty ten-inch, and twenty-five twelve-inch guns, all of which guns shall be breech-loading single-charge steel guns, and of weight and dimensions to be prescribed by the Board, and shall fulfill the conditions hereinafter provided: *Provided*, That if two or more persons, citizens of the United States, submit proposals to furnish said guns, either in part or in whole, at prices not materially different from each other, contracts may be awarded, in such proportion, among the citizens submitting such proposals as the Secretary of War may direct. One type gun of each of the above-mentioned caliber, with the proper supply of ammunition therefor, shall be presented for test at such place and within such time as the contract shall provide, and shall be subjected to such tests in respect to accuracy, range, power, endurance, and general efficiency as the Board of Ordnance and Fortification shall have prescribed. All the other guns of each caliber, with the proper supply of ammunition, shall be delivered at such place and within such times as the contract shall provide, and shall be subjected to the ordinary service test of ten

Contract for breech-loading steel guns of large caliber authorized. Sec. 2, Aug. 18, 1890, v. 26, p. 319.

<sup>1</sup>The acts of February 18, 1893 (27 Stat. L., 461), August 1, 1894 (28 Stat. L., 215), March 2, 1895 (28 Stat. L., 706), and June 6, 1896 (29 Stat. L., 260) contain the same provisions.

rounds with the full charge and weight of projectile, which shall develop the standard power prescribed for the gun. If the type gun sustains the prescribed test to the satisfaction of the Board of Ordnance and Fortification, it and each of the other guns which sustains the ordinary service test, and the ammunition expended in such tests, shall be accepted under the contract. All guns manufactured under these contracts, including the type guns, shall be subjected to inspection at all stages of manufacture, and no change whatever shall be made in the material, mode of manufacture, or dimensions of the guns for service from those employed in the type gun without the approval of the Secretary of War. Payment for each gun and ammunition for testing same, including cost of transportation, shall be made upon the satisfactory completion of the prescribed test for that gun. All tests of guns shall be made in the presence of the Board and of the person presenting the gun, or his authorized agent, and due regard shall be paid to suggestions offered by him which respect the mode of making such test.

Maximum ex-  
penditures.

That under the provisions of this section there shall not be expended or contract or contracts entered into involving the Government in an aggregate expenditure exceeding three million seven hundred and seventy-five thousand dollars, nor an expenditure on the part of the Government

American man-  
ufacture, etc.

in any one fiscal year in excess of one million dollars. And all guns and materials purchased under the authority of this section shall be of American manufacture and furnished by citizens of the United States: *Provided further,*

Maximum Pa-  
cific coast con-  
tracts.

That contracts may be made for not exceeding one-fourth of the guns herein provided for, to be constructed on the Pacific coast, in the discretion of the Secretary of War. *Sec. 2, act of August 18, 1890 (26 Stat. L., 319).*

Feb. 24, 1891, v.  
25, p. 770.

That section two of "An act making appropriations for fortifications and other works of defense, for the armament thereof, for the procurement of heavy ordnance for trial and service, and for other purposes," approved August eighteenth, eighteen hundred and ninety, is hereby modified and enlarged so that the amount authorized to be

Maximum limit  
of expenditure  
enlarged.

expended thereunder be increased to four million two hundred and fifty thousand dollars, to be expended on the terms and conditions and for the purposes therein set forth, except that fifty thousand of said sum shall be reserved to cover all expenses other than the powder and projectiles incident to the tests and inspection of the guns, and also that the Secretary of War be authorized to contract there-

under for such less number of guns than one hundred as he may deem for the best interests of the Government.<sup>1</sup> Decreased number of heavy guns may be purchased.

*Act of February 24, 1891 (26 Stat. L., 770).*

887. That whenever any party shall present for test a completed breech-loading mortar of twelve inches caliber, of not more than forty thousand pounds weight, built of mortar steel, with a proper supply of ammunition therefor, not exceeding two hundred rounds, such mortar shall be tested by the Board of Ordnance and Fortification, and should it be shown to the satisfaction of said Board of Ordnance and Fortification by such test to be at least equal in accuracy, range, power, endurance, material, and general efficiency to the best breech loading service mortar in use, the mortar and ammunition shall be paid for, including cost of transportation, and a contract shall be made for a further supply of fifty and no more, at such reasonable cost as the Board of Ordnance and Fortification shall determine, not to exceed six thousand five hundred dollars each, the entire number to be delivered in one year from date of contract. Said mortar, and all which may be contracted for under this provision, shall be subject to inspection at each stage of manufacture. Contract for steel breech-loading mortar. Sec. 2, Mar. 2, 1895, v. 28, p. 707. *Sec. 2, act of March 2, 1895 (28 Stat. L., 707).*

888. That contracts shall be invited by the Secretary of War by proper notice and publication for the manufacture (finishing and assembling) of eight-inch, ten-inch, and twelve-inch steel sea-coast guns from forgings procured under fortification act of September twenty-second, eighteen hundred and eighty-eight, and if private parties shall offer to finish, assemble, and deliver any of such guns in proper condition for use as completed guns, at a price fair to the Government, the necessary contracts shall be entered into by the Secretary for that purpose, and to carry into effect this provision the sum of two hundred thousand dollars is hereby appropriated: *Provided*, That the finishing and assembling of not over fifty per centum of each caliber of such forgings shall be thus contracted for: *Provided further*, That all contracts made hereunder shall be so made as to fully protect the Government against all loss or damage which may result from imperfect work, the fault of the contractor, and the work done hereunder shall be subject to inspection at every stage. Contracts for manufacture of forgings, etc. Aug. 18, 1890, v. 26, p. 317; Sept. 22, 1888, v. 25, pp. 489-491. *Act of August 18, 1890 (26 Stat. L., 317).*

<sup>1</sup>Section 6 of the act of September 22, 1888 (25 Stat. L., 490), contained a similar offer, in respect to the presentation for test of cast-iron breech-loading mortars of 12 inches caliber and breech-loading steel guns of 10 and 12 inches caliber, which was withdrawn as to the cast-iron breech-loading mortars by section 3 of the act of March 2, 1895 (28 Stat. L., 707).

Caliber, etc., of  
guns required  
for service to be  
determined by  
Secretary of  
War.

July 5, 1884, v.  
23, p. 159.

**889.** It shall be the duty of the Secretary of War to cause the various calibers, lengths of bore, greatest and least admissible weights of guns for each caliber, together with the greatest and least weights of projectiles for each caliber, of all the various calibers required for the service, together with the number of each caliber of gun required, to be determined, and to make the same known to manufacturers of ordnance on their application and to report the same to Congress at its next session for its approval. *Act of July 5, 1884 (23 Stat. L., 159).*

#### BOARD FOR TESTING RIFLED CANNON.

Public tests of  
rifled cannon, etc.  
Sec. 2, *ibid.*

**890.** That hereafter all rifled cannon of any particular material, caliber, or kind, made at the cost of the United States, shall be publicly subjected to the proper test, including such rapid firing as a like gun would be likely to be subjected to in actual battle, for the determination of the endurance of the same to the satisfaction of the President of the United States or such persons as he may select; and he is hereby authorized to select not to exceed five persons, who shall be skilled in such matters; and if such gun shall not prove satisfactory, they shall not be put to use in the Government service. *Sec. 2, ibid.*

Sale of smooth-  
bore cannon for  
experimental  
purposes.  
Sec. 3, *ibid.*

**891.** That the Secretary of War and the Secretary of the Navy are hereby authorized to sell to projectors of methods of conversion, for experimental purposes only, any smooth-bore cannon on hand required by them, at prices which shall not be less than have been received from auction sales for such articles, and deliver the same, at the cost of the Government, at the nearest convenient place for shipment or public transportation; the cost of delivery to be deducted from the proceeds of sales, and the balance to be covered into the Treasury of the United States. *Sec. 3, ibid.*

#### THE UNITED STATES TESTING MACHINE.

Par.

**892.** The United States testing machine.

**893.** No compensation for officers of the United States.

**894.** Tests to be made; use of machine.

Par.

**895.** Advance payments may be required for tests; record of tests shall be furnished to American Society of Civil Engineers.

The United  
States testing  
machine; board.

Sec. 4, Mar. 3,  
1875, v. 18, p. 399;  
Mar. 3, 1873, v. 17, p. 543.

**892.** That for experiments in testing iron and steel, including the cost of any machine built for such purpose, the sum of fifty thousand dollars is hereby appropriated; and

the further sum of twenty-five thousand dollars provided "for improved machinery and instruments for testing American iron and steel" in the act entitled "An act making appropriations for the support of the Army for the year ending June thirtieth, eighteen hundred and seventy-four," approved March third, eighteen hundred and seventy-three, is hereby continued and made available for such purpose; and that the President be, and hereby is authorized to appoint a board, to consist of one officer of the engineers of the United States Army, one officer of ordnance of the United States Army, one line-officer of the United States Navy, one engineer of the United States Navy, and three civilians who shall be experts; and it shall be the duty of said board to convene at the earliest practicable moment, at such place as may be designated by the President, for the purpose of determining, by actual tests, the strength and value of all kinds of iron, steel and other metals which may be submitted to them or by them produced, and to prepare tables which will exhibit the strength and value of said materials for constructive and mechanical purposes, and to provide for the building of a suitable machine for establishing such tests. *Sec. 4, act of March 3, 1875 (18 Stat. L., 399).*

893. That no officers in the pay of the Government shall be entitled to, or receive, any additional compensation by reason of any services rendered in connection with this board; but one of the civil experts shall act as secretary of the board, and shall be entitled, under this act to such compensation as the President may deem proper and fit: *Provided*, That not more than fifteen thousand dollars of the sum herein provided shall be used for the expenses of such board.<sup>1</sup> *Ibid.*

No compensation to officers of the United States.  
*Ibid.*

Secretary.

894. That the Secretary of War is hereby authorized to cause the machine built for testing iron and steel to be set up and applied to the testing of iron and steel for all persons who may desire to use it, upon the payment of a suitable fee for each test; the table of fees to be approved by the Secretary of War, and to be so adjusted from time to time as to defray the actual cost of the tests as near as may be. *Act of June 20, 1878 (20 Stat. L., 223).* That hereafter the tests of iron and steel and other materials for industrial purposes shall be continued, and report thereof shall be made to Congress. *Act of March 3, 1885 (23 Stat. L., 502).*

Testing iron and steel; use of machine.  
June 20, 1878,  
v. 20, p. 223.

<sup>1</sup>The act of March 3, 1873 (17 Stat. L., 543), contained an appropriation of \$25,000 for "improved machinery and instruments for testing American iron and steel."



Advance payments may be required. Record of tests shall be furnished to American Society of Civil Engineers.

June 30, 1882, v. 22, p. 122.

**895.** That in making tests for private citizens the officer in charge may require payment in advance, and may use the funds so received in making such private tests, making full report thereof to the Chief of Ordnance; and the Chief of Ordnance shall give attention to such programme of tests as may be submitted by the American Society of Civil Engineers, and the record of such tests shall be furnished said society to be by them published at their own expense.<sup>1</sup> *Act of June 30, 1882 (22 Stat. L., 122).*

#### ARMS, ARMORIES, AND ARSENALS.

Par.  
896. Armories, officers, workmen.  
897. Pay of officers, clerks, etc., at armories.  
898. When paid; who to give bond.  
899. Annual accounts to Congress.  
900. Arsenals may be abolished.  
901. Distribution of arms to States, etc.  
902. Enticing away workmen; penalty.  
903. Workmen guilty of certain misconduct.  
904. Distribution of arms to States which had not received their quota from 1862 to 1869.  
905. Exemption from service as jurors.

Par.  
906. Springfield breech-loading system to be used for muskets and carbines.  
907. No royalty to be paid by United States to its officers for patent mentioned in preceding section.  
908. No money to be expended in perfecting inventions.  
909. Magazine arms: Board of officers to test.  
910. Manufacture of magazine arms.  
911. The same.  
912. Arms for militia.  
912a. Issues of arms, etc., to Executive Departments.

Armories, officers, workmen.

Apr. 2, 1794, c. 14, s. 2, v. 1, p. 352;  
Apr. 23, 1808, c. 55, s. 2, v. 2, p. 490;  
Aug. 5, 1854, c. 267, s. 1, v. 10, p. 578; Aug. 6, 1861, c. 57, s. 5, v. 12, p. 318.

Sec. 1662, R. S.

Pay of officers, clerks, etc., at armories.

Aug. 23, 1842, c. 186, s. 2, v. 5, p. 512;  
Mar. 3, 1857, c. 106, s. 3, v. 11, p. 203;  
Aug. 6, 1861, c. 57, s. 5, v. 12, p. 318;  
Mar. 2, 1867, c. 167, s. 12, v. 14, p. 467; June 23, 1874, v. 18, p. 282.

Sec. 1663, R. S.

When paid; who to give bond.

Aug. 23, 1842, c. 186, s. 2, v. 5, p. 512.

Sec. 1664, R. S.

**896.** At each arsenal there shall be established a national armory, in which there shall be employed one superintendent, who shall be an officer of the Ordnance Department, to be designated by the President; one master-armorer, who shall be appointed by the President, and as many workmen as the Secretary of War may, from time to time, deem necessary.

**897.** The ordnance officer in charge of any national armory shall receive no compensation other than his regular pay as an officer of the corps; the master-armorers shall receive fifteen hundred dollars per annum each; the inspectors and clerks, each, eight hundred dollars per annum, except the clerks of the armory at Springfield, Massachusetts, who shall receive sixteen hundred and fifty dollars per annum.

**898.** The several compensations fixed by the preceding section for master-armorers and inspectors shall be paid quarter-yearly. All military store-keepers and paymasters

<sup>1</sup>The acts of March 3, 1883 (22 Stat. L., 460), July 5, 1884 (23 Stat. L., 112), and March 3, 1885 (23 Stat. L., 502), contain a similar provision.

shall give bond and security for the faithful discharge of their duties, in such sum as may be prescribed by the Secretary of War.

899. An annual account of the expenses of the national armories shall be laid before Congress, together with an account of the arms made and repaired therein.

900. The Secretary of War is authorized to abolish such of the arsenals of the United States as, in his judgment, may be useless or unnecessary.

901. All the arms procured in virtue of any appropriation authorized by law for the purpose of providing arms and equipments for the whole body of the militia of the United States shall be annually distributed to the several States of the Union according to the number of their Representatives and Senators in Congress, respectively; and all arms for the Territories and for the District of Columbia shall be annually distributed in such quantities, and under such regulations, as the President may prescribe. All such arms are to be transmitted to the several States and Territories by the United States.

902. If any person procures or entices any artificer or workman, retained or employed in any arsenal or armory, to depart from the same during the continuance of his engagement, or to avoid or break his contract with the United States, or if any person, after due notice of the engagement of any such workman or armorer, during the continuance of such engagement, retains, hires, or in anywise employs, harbors, or conceals such artificer or workman, he shall be fined not more than fifty dollars, or be imprisoned not more than three months.

903. If any artificer or workman, hired, retained, or employed in any public arsenal or armory, wantonly and carelessly breaks, impairs, or destroys any implements, tools, or utensils, or any stock, or materials for making guns, the property of the United States, or willfully and obstinately refuses to perform the services lawfully assigned to him, pursuant to his contract, he shall forfeit a sum not exceeding twenty dollars for every such act of disobedience or breach of contract, to be recovered in any court having competent jurisdiction thereof.

904. The Secretary of War is authorized and directed to distribute to such States as did not receive the same, their proper quota of arms and military equipment for each year, from eighteen hundred and sixty-two to eighteen hundred and sixty-nine, under the provisions of section sixteen hundred and sixty-one: *Provided*, That in the organization and equipment of military companies and organizations with

Annual accounts to Congress.

Apr. 2, 1794, c. 14, s. 5, v. 1, p. 352.

Sec. 1665, R. S.

Arsenals may be abolished.

Mar. 3, 1853, c. 98, s. 1, v. 10, pp. 214, 217.

Sec. 1666, R. S.

Distribution of arms to States, etc.

Apr. 23, 1808, c. 55, s. 3, v. 2, p. 490;

Mar. 3, 1855, c. 169, s. 7, v. 10, p. 639.

Sec. 1667, R. S.

Enticing away workmen; penalty.

May 7, 1800, c. 46, s. 2, v. 2, p. 61.

Sec. 1668, R. S.

Working men guilty of certain misconduct.

May 7, 1800, c. 46, s. 3, v. 2, p. 62.

Sec. 1669, R. S.

Distribution of arms to States which had not received their quota from 1862 to 1869.

Mar. 3, 1873, c. 282, v. 17, p. 608.

Sec. 1670, R. S.

such arms, no discrimination shall be made between companies and organizations on account of race, color, or former condition of servitude.<sup>1</sup>

Exemption from service as jurors.

May 7 1800, c.

46, s. 4, v. 2, p. 62;

Mar. 3, 1855 c. 169,

s. 7, v. 10, p. 639.

Sec. 1671, R. S.

Springfield breech-loading system to be used for muskets and carbines.

June 6, 1872, c.

316, v. 17, p. 261.

Sec. 1672, R. S.

No royalty to be paid by United States to its officers for patent mentioned in preceding section.

June 6, 1872, c.

316, v. 17, p. 261.

Sec. 1673, R. S.

No money to be expended in perfecting inventions.

Mar. 3, 1875, v.

18, p. 455.

Magazine rifles; board of officers to test.

Feb. 27, 1893,

v. 27, p. 486.

905. All artificers and workmen employed in the armories and arsenals of the United States shall be exempted, during their time of service, from service as jurors in any court.

906. The breech-loading system for muskets and carbines adopted by the Secretary of War known as "the Springfield breech-loading system," is the only system to be used by the Ordnance Department in the manufacture of muskets and carbines for the military service.<sup>2</sup>

907. No royalty shall be paid by the United States to any one of its officers or employes for the use of any patent for the system, or any part thereof, mentioned in the preceding section, nor for any such patent in which said officers or employes may be directly or indirectly interested.

908. That hereafter no money shall be expended at said armories in the perfection of patentable inventions in the manufacture of arms by officers of the Army otherwise compensated for their services to the United States.<sup>3</sup> *Act of March 3, 1875 (18 Stat. L., 455).*

909. That no part of this appropriation shall be expended for the manufacture of magazine rifles of foreign invention until such magazine rifles of American invention as may be presented for tests to the War Department within the next thirty days shall have been tested by a board of officers to be selected by the Secretary of War, which board shall report to the Board of Ordnance and Fortification, on or before July first, eighteen hundred and ninety-three. If the decision of said board of officers shall be in favor of any American invention and shall also receive the approval of the Board of Ordnance and Fortification and the Secretary of War, then this appropriation, or such part thereof as the Secretary may direct, shall be expended in the manufacture of such American arm: *Provided further*, That if no such American invention shall be recommended by said board or receive the approval of the Secretary of War this

<sup>1</sup> See chapter entitled THE MILITIA.

<sup>2</sup> Under the authority conferred by several acts of appropriation (see paragraphs 908-911 post), the Springfield breech-loading system has been superseded by a system of breech-loading magazine small arms.

<sup>3</sup> By the act of March 3, 1883 (22 Stat. L., 625), "the Secretary of the Interior and the Commissioner of Patents are authorized to grant any officer of the Government, except officers and employees of the Patent Office, a patent for any invention of the classes mentioned in section forty-eight hundred and eighty-six of the Revised Statutes, when such invention is used or to be used in the public service, without the payment of any fee: *Provided*, That the applicant in his application shall state that the invention described therein, if patented, may be used by the Government or any of its officers or employees in the prosecution of work for the Government, or by any other person in the United States, without the payment to him of any royalty thereon, which stipulation shall be included in the patent."

appropriation shall be applicable to the manufacture of the magazine arm recommended for trial by the board recently in session and approved by the Secretary of War. *Act of February 27, 1893* (27 Stat. L., 486).

910. For manufacture of arms at the national armories, four hundred thousand dollars: *Provided*, That if the Secretary of War shall, upon the report of the small-arms board now in session, adopt a new rifle or system for rifles for the military service, or for trial with a view to such adoption, then this appropriation shall be available for the procurement of such arms. *Act of July 16, 1892* (27 Stat. L., 182). Manufacture of magazine arms. July 16, 1892, v. 27, p. 182.

911. Manufacture of arms at the National armories, four hundred thousand dollars: *Provided*, That this appropriation shall be applicable to the manufacture of the magazine arm recommended for trial by the board, recently in session, and approved by the Secretary of War.<sup>1</sup> *Act of August 6, 1894* (28 Stat. L., 242). Manufacture of arms, etc. Aug. 6, 1894, v. 28, p. 242.

912. That hereafter the cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and District of Columbia, under the act of February twelfth, eighteen hundred and eighty-seven, shall be credited to the appropriation for "manufacture of arms at national armories," and used to procure like ordnance stores, and that said appropriation shall be available until exhausted, not exceeding two years.<sup>2</sup> *Act of March 2, 1889* (25 Stat. L., 833). Arms for militia. Mar. 2, 1889, v. 25, p. 833.

#### ISSUES OF ARMS, ETC., TO EXECUTIVE DEPARTMENTS.

912a. That upon the request of the head of any Department, the Secretary of War be, and he hereby is, authorized and directed to issue arms and ammunition whenever they may be required for the protection of the public money and property, and they may be delivered to any officer of the Department designated by the head of such Department, to be accounted for to the Secretary of War, and to be returned when the necessity for their use has expired. Arms and ammunition heretofore furnished to any Department by the War Department, for which the War Department has not been reimbursed, may be receipted for under the provisions of this act. *Act of March 3, 1879* (20 Stat. L., 410). Issue of arms to the several Executive Departments. Mar. 3, 1879, v. 20, p. 410.

<sup>1</sup>Under the authority conferred by this statute a system of magazine small arms was adopted by the Secretary of War on the recommendation of the Board convened in pursuance of the act of February 27, 1893 (27 Stat. L., 480). The magazine arm adopted is known as the Krag-Jorgensen magazine rifle, caliber 30. This provision was repeated in the acts of February 12, 1895 (28 Stat. L., 682), and March 16, 1896 (29 Stat. L., 68).

<sup>2</sup>This provision was repeated in the act of June 13, 1890 (26 Stat. L., 158).

## CHAPTER XXIII.

### THE SIGNAL DEPARTMENT.

Par.	Par.
913. Chief Signal Officer; duties.	921. Enlisted men to make returns of property.
914. The Signal Corps; composition.	922. Regulations to be prescribed by Chief Signal Officer.
915. Reorganization of officers.	923. Military telegraph-lines, Chief Signal Officer to control; expenses, etc., how defrayed.
916. Appointments, promotions, etc.	924. Construction of new lines.
917. Signal Corps to remain part of Military Establishment.	925. Injury to telegraph-lines.
918. Weather Bureau; details from Army.	
919. Enlisted men.	
920. Signal Corps to be appropriated for with the Army.	

Chief Signal Officer; duties.  
Sec. 2, Oct. 1, 1890, v. 26, p. 653.

913. That the Chief Signal Officer shall have charge, under the direction of the Secretary of War, of all military signal duties, and of books, papers, and devices connected therewith, including telegraph and telephone apparatus and the necessary meteorological instruments for use on target ranges, and other military uses; the construction, repair, and operation of military telegraph-lines, and the duty of collecting and transmitting information for the Army by telegraph or otherwise, and all other duties usually pertaining to military signaling; and the operations of said corps shall be confined to strictly military matters.<sup>1</sup>  
*Sec. 2, act of October 1, 1890 (26 Stat. L., 653).*

<sup>1</sup> The act of June 16, 1880 (21 Stat. L., 267), contained a provision conferring upon the Chief Signal Officer the rank and pay of a brigadier-general. The rank attached to the office under section 1195, Revised Statutes, was that of a colonel of cavalry. The duties performed by this officer in connection with the observation and report of storms were, by the act of October 1, 1890 (26 Stat. L., 653), transferred to the Department of Agriculture. This statute, which became operative on July 1, 1891, contained the following provisions:

SEC. 3. That the Chief of the Weather Bureau, under the direction of the Secretary of Agriculture, on and after July first, eighteen hundred and ninety one, shall have charge of the forecasting of weather, the issue of storm warnings, the display of weather and flood signals for the benefit of agriculture, commerce, and navigation, the gauging and reporting of rivers, the maintenance and operation of seacoast telegraph lines and the collection and transmission of marine intelligence for the benefit of commerce and navigation, the reporting of temperature and rain-fall conditions for the cotton interests, the display of frost and cold-wave signals, the distribution of meteorological information in the interests of agriculture and commerce, and the taking of such meteorological observations as may be necessary to establish and record the climatic conditions of the United States, or as are essential for the proper execution of the foregoing duties.

SEC. 5. That the enlisted force of the Signal Corps, excepting those hereinafter

914. That in addition to the Chief Signal Officer the commissioned force of the Signal Corps shall hereafter consist of one major, four captains (mounted), and four first lieutenants (mounted), who shall receive the pay and allowances of like grades in the Army. The officers herein provided for shall be appointed from the Army, including lieutenants of the Signal Corps, preference being given to officers who have performed long and efficient service in the Signal Service: *Provided*, That no appointment shall be made until a board, to be appointed by the Secretary of War, shall have submitted a report recommending officers for appointment in the Signal Corps in the order of merit, based upon the importance and usefulness of work performed in the Signal Service, as said board may determine from the official records. And such second lieutenants of the Signal Corps as may not be promoted under the provisions of this act shall be appointed second lieutenants in the line of the Army with present date of commission, and shall be assigned to the first vacancies which may occur in the grade of second lieutenant after the appointments herein provided for have been made. *Sec. 6, ibid.*

915. That whenever a vacancy in the grade of brigadier-general shall occur in the office of Chief Signal Officer, said vacancy shall not be filled, but said grade shall cease and determine, and thereafter the commissioned force of the Signal Corps shall consist of one colonel, who shall be the Chief Signal Officer of the Army, and selected from the Corps, and one lieutenant-colonel, one major, and three captains (mounted) to be appointed from the Corps according to seniority, and three first lieutenants (mounted) to be appointed as now provided by law, who shall each receive the pay and allowances of like grades in the Army, and the officers of the Signal Corps shall retain the commissions held by them at the date of the next vacancy in the office of Chief Signal Officer, unless promoted in compliance with law. *Act of August 6, 1894 (28 Stat. L., 234).*

The Signal Corps; composition. Sec. 6, *ibid.*

Reorganization of officers. Aug. 6, 1894, v. 28, p. 234.

provided for, shall be honorably discharged from the Army on June thirtieth, eighteen hundred and ninety-one, and such portion of this entire force, including the civilian employees of the Signal Service, as may be necessary for the proper performance of the duties of the Weather Bureau shall, if they so elect, be transferred to the Department of Agriculture, and the compensation of the force so transferred shall continue as it shall be in the Signal Service on June thirtieth, eighteen hundred and ninety-one, until otherwise provided by law: *Provided*, That skilled observers serving in the Signal Service at said date shall be entitled to preference over other persons not in the Signal Service for appointment in the Weather Bureau to places for which they may be properly qualified until the expiration of the time for which they were last enlisted.

For statutory provisions respecting sale of surplus publications see paragraph 76, *ante*.

Appointments,  
promotions, etc.

Sec. 7, Oct. 1,  
1890, v. 26, p. 653;  
R. S., secs. 1206,  
1207, p. 214,  
amended.

**916.** That all appointments and promotions in the Signal Corps after this reorganization shall be made after examination and approval under sections twelve hundred and six and twelve hundred and seven of the Revised Statutes, which are hereby amended so as to be applicable to and to provide for the promotion of the lieutenants of the Signal Corps in the same manner as they now apply to the Corps of Engineers and the Ordnance Corps; and all vacancies which may hereafter exist in the grade of first lieutenant in the Signal Corps shall be filled by transfer from the line of the Army, after competitive examination and recommendation by a board of officers of the Signal Corps to be appointed by the Secretary of War. *Sec. 7, act of October 1, 1890 (26 Stat. L., 653).*

Signal Corps to  
remain part of  
Military Estab-  
lishment.

Sec. 1, Oct. 1,  
1890, v. 26, p. 653.

**917.** That the civilian duties now performed by the Signal Corps of the Army shall hereafter devolve upon a bureau to be known as the Weather Bureau, which, on and after July first, eighteen hundred and ninety-one, shall be established in and attached to the Department of Agriculture, and the Signal Corps of the Army shall remain a part of the Military Establishment under the direction of the Secretary of War, and all estimates for its support shall be included with other estimates for the support of the Military Establishment. *Sec. 1, ibid.*

Force of  
Weather Bureau.  
Sec. 4, *ibid.*

**918.** That the Weather Bureau shall hereafter consist of one Chief of Weather Bureau and such civilian employees as Congress may annually provide for and as may be necessary to properly perform the duties devolving on said bureau by law, and the chief of said bureau shall receive an annual compensation of four thousand five hundred dollars, and be appointed by the President, by and with the advice and consent of the Senate: *Provided*, That the Chief Signal Officer of the Army may, in the discretion of the President, be detailed to take charge of said bureau, and in like manner other officers of the Army, not exceeding four, expert in the duties of the weather service may be assigned to duty with the Weather Bureau, and while so serving shall receive the pay and allowances to which they are entitled by law. *Sec. 4, ibid.*

Details from  
Army.

Enlisted men.  
Sec. 8, *ibid.*

**919.** That the enlisted force of the Signal Corps of the Army shall hereafter consist of fifty sergeants, of which ten shall be of the first class, with pay of hospital stewards. *Sec. 8, ibid.*

Signal Corps to  
be appropriated  
for with the  
Army.

Sec. 9, Oct. 1,  
1890, v. 26, p. 654.

**920.** That on and after July first, eighteen hundred and ninety-one, the appropriations for the support of the Signal Corps of the Army shall be made with those of other staff corps of the Army. *Sec. 9, ibid.*

921. That, from and after the passage of this act, every officer of the Signal Corps, every non-commissioned officer or private of the Signal Corps, and all other officers, agents, or persons who now have in possession, or may hereafter receive or may be intrusted with any stores or supplies, shall, quarterly or more often, if so directed, and in such manner and on such forms as may be prescribed by the Chief Signal Officer, make true and correct returns to the Chief Signal Officer of all Signal Service property and all other supplies and stores of every kind received by or intrusted to them and each of them, or which may, in any manner, come into their and each of their possession or charge.<sup>1</sup> *Act of October 12, 1888 (25 Stat. L., 552).*

Enlisted men, etc., to make returns of property. Oct 12, 1888, v. 25, p. 552.

922. The Chief Signal Officer, subject to the approval of the Secretary of War, is hereby authorized and directed to draw up and enforce in his Bureau a system of rules and regulations for the government of the Signal Bureau, and of all persons in said Bureau, and for the safe-keeping and preservation of all Signal Service property of every kind, and to direct and prescribe the kind, number, and form, of all returns and reports, and to enforce compliance therewith. *Ibid.*

Regulations to be prescribed by Chief Signal Officer. *Ibid.*

#### MILITARY TELEGRAPH-LINES.

923. For completing the construction, and for maintenance and use of military telegraph-lines on the Indian and Mexican frontiers, and for the connection of military posts and stations, for the better protection of immigration and the frontier settlements from depredations, especially in the State of Texas, the Territories of New Mexico and Arizona, and the Indian Territory, eighty-eight thousand dollars:<sup>2</sup> *Act of March 3, 1875 (18 Stat. L., 388).* *Provided, That on and after the first day of July, eighteen hundred and eighty-three, all moneys received for the transmission of*

Chief Signal Officer to control; expenses, how defrayed; report. Mar. 3, 1875, v. 18, p. 388.

Receipts to be paid into Treasury. Mar. 3, 1883, v. 22, p. 616.

<sup>1</sup>Section 10 of the act of October 1, 1890 (26 Stat. L., 655), contains the provision that the President is authorized to appoint on or before March first, eighteen hundred and ninety-one, a board of three officials, which board shall be charged with the duty of examining the classes and kinds of property and the amount of moneys pertaining to and in the possession of the Signal Corps, and said board shall as soon as practicable make the Secretary of War a report setting forth the amount of moneys and the quantities and kinds of property more suitable for the work of the Weather Bureau and not necessary for the use of the Signal Corps, and what part of said property will be suitable and necessary for the Signal Corps, and upon the approval of said report by the Secretary of War the property and moneys which shall be decided to properly pertain to the Weather Bureau work shall be transferred to such bureau, and to the custody of the Secretary of Agriculture, while the remaining property and funds shall continue in the possession of the Signal Corps.

<sup>2</sup>The act of March 3, 1875, contained a provision authorizing the Secretary of War "to pay the expenses of operating and keeping in repair the said telegraph-lines out of any money received for dispatches sent over said lines; any balance remaining after the payment of such expenses to be covered into the Treasury as a miscellaneous receipt; the money received in any one fiscal year to be used only in payment for the expenses of that year. And a full report of the receipts and expenditures in connection with the said telegraph-lines shall be made quarterly to the Secretary of War, through the Chief Signal Officer. And the Chief Signal Officer shall have the charge and control of said lines of telegraph in the construction, repair, and operation of the same."



private dispatches over any and all telegraph-lines owned or operated by the United States, shall be paid into the Treasury of the United States, as required by section thirty-six hundred and seventeen of the Revised Statutes; and all acts or parts of acts inconsistent herewith are hereby repealed. *Act of March 3, 1883 (22 Stat. L., 616).*

Construction of  
new lines.  
Aug. 7, 1882, v.  
22, p. 319.

**924.** That the construction of new lines of telegraph shall be under the supervision and direction of the several military commanders, subject to the approval of the Secretary of War. *Act of August 7, 1882 (22 Stat. L., 319).*

Injury to tele-  
graph-lines, &c.,  
of United States,  
interference with  
working, obstruc-  
tion, &c., penalty.  
June 23, 1874, v.  
18, p. 250.

**925.** That any person or persons who shall willfully or maliciously injure or destroy any of the works or property or material of any telegraphic line constructed and owned, or in process of construction, by the United States, or that may be hereafter constructed and owned or occupied and controlled by the United States, or who shall willfully or maliciously interfere in any way with the working or use of any such telegraphic line, or who shall willfully or maliciously obstruct, hinder, or delay the transmission of any communication over any such telegraphic line, shall be deemed guilty of a misdemeanor, and, on conviction thereof in any district court of the United States having jurisdiction of the same, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or with imprisonment for a term not exceeding three years, or with both, in the discretion of the court. *Act of June 23, 1874 (18 Stat. L., 250).*

## CHAPTER XXIV.

### THE RECORD AND PENSION OFFICE.

Par.

926. Record and Pension Office; duties.

927. Revolutionary, military records, etc.

928. All revolutionary, army records, etc., to be transferred to the Secretary of War.

Par.

929. Military histories of regiments may be furnished States.

926. That the division organized by the Secretary of War in his office for the preservation and custody of the records of the volunteer armies under the name of the record and pension division is hereby established as now organized, and shall hereafter be known as the Record and Pension Office of the War Department; and the President is hereby authorized to select an officer of the Army whom he may consider to be especially well qualified for the performance of the duties hereinafter specified and, by and with the advice and consent of the Senate, to appoint him in the Army to be chief of said office, who shall have the rank, pay, and allowances of a colonel and shall, under the Secretary of War, have charge of the military and hospital records of the volunteer armies and the pension and other business of the War Department connected therewith; and all laws or parts of laws inconsistent with the terms of this act are hereby repealed. *Act of May 9, 1892 (27 Stat. L., 27).*

Record and Pension Office, War Department, established. May 9, 1892, v. 27, p. 27.

Duties.

927. Whereas the military records of the American Revolution and of the war of eighteen hundred and twelve are now preserved in different Executive Departments of the Government and are not easily accessible; and

Revolutionary military records.

Whereas it is important that they should be collected in one Department, where they could be easily consulted and properly arranged for use: Therefore,

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the military records of the American Revolution and of the*

Transfer to  
War Depart-  
ment.  
July 27, 1892, v.  
27, p. 275.

war of eighteen hundred and twelve, now preserved in the Treasury and Interior Departments, be transferred to the War Department, to be preserved in the Record and Pension Division of that Department, and that they shall be properly indexed and arranged for use. *Act of July 27, 1892 (27 Stat. L., 275).*

All Revolution-  
ary army rec-  
ords, etc., trans-  
ferred to Secre-  
tary of War.  
Aug. 18, 1894,  
v. 28, p. 403.

**928.** That all military records, such as muster and pay rolls, orders, and reports relating to the personnel or the operations of the armies of the Revolutionary war and of the war of eighteen hundred and twelve, now in any of the Executive Departments, shall be transferred to the Secretary of War to be preserved, indexed and prepared for publication. *Act of August 18, 1894 (28 Stat. L., 403).*

Military histo-  
ries of regiments  
may be furnished  
States.  
Mar. 2, 1895, v.  
28, p. 788.

**929.** And the Secretary of War shall, upon the application of the Governor of any State, furnish to such Governor a transcript of the military history of any regiment or company of his State, under such regulations as the Secretary of War may prescribe, at the expense of such State.<sup>1</sup> *Act of March 2, 1895 (28 Stat. L., 788).*

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<sup>1</sup> This provision was repeated in the act of May 28, 1896 (29 Stat. L., 161).

## CHAPTER XXV.

### POST AND REGIMENTAL CHAPLAINS.

Par.  
930. Chaplains; number.  
931. Rank.  
932. Qualifications.  
933. Duties as clergymen.

Par.  
934. Duties as school-teachers.  
935. Monthly reports.  
936. Facilities in performance of duties.

**930.** The President may, by and with the advice and consent of the Senate, appoint a chaplain for each regiment of colored troops, and thirty post-chaplains: *Provided*, That no appointment of regimental or post-chaplains shall be made until those on waiting orders are assigned.

Chaplains, number of.

July 7, 1838, c. 194, v. 5, p. 308;  
Mar. 2, 1849, c. 83, s. 3, v. 9, p. 351;  
Apr. 9, 1864, c. 53, s. 1, v. 13, p. 46;  
July 28, 1866, c. 299, ss. 7, 30, v. 14, pp. 333, 337; Mar. 2, 1867, c. 145, s. 7, v. 14, p. 423; July 15, 1870, c. 294, s. 12, v. 16, p. 318. Sec. 1121, R. S.

**931.** Chaplains shall have the rank of captain of infantry, without command, and shall be on the same footing with other officers of the Army, as to tenure of office, retirement, and pensions.

Rank, etc., of chaplains.

Apr. 9, 1864, c. 53, s. 1, v. 13, p. 46;  
July 28, 1866, c. 299, ss. 7, 30, v. 14, pp. 333, 337; Mar. 2, 1867, c. 145, s. 7, v. 14, p. 423; July 15, 1870, c. 294, s. 12, v. 16, p. 318. Sec. 1122, R. S.

**932.** No person shall be appointed as regimental or post chaplain until he shall furnish proof that he is a regularly-ordained minister of some religious denomination, in good standing at the time of his appointment, together with a recommendation for such appointment from some authorized ecclesiastical body, or from not less than five accredited ministers of said denomination.

Qualifications of.

July 17, 1862, c. 200, s. 8, v. 12, p. 595. Sec. 1123, R. S.

**933.** All regimental chaplains and post-chaplains shall, when it may be practicable, hold appropriate religious services, for the benefit of the commands to which they may be assigned to duty, at least once on each Sunday, and shall perform appropriate religious burial services at the burial of officers and soldiers who may die in such commands.

Duties as clergymen.

Apr. 9, 1864, c. 53, s. 4, v. 13, p. 46. Sec. 1125, R. S.

**934.** The duty of chaplains of regiments of colored troops and of post-chaplains shall include the instruction of the enlisted men in the common English branches of education.

Duties as school-teachers.

July 5, 1838, c. 162, s. 18, v. 5, p. 259; July 28, 1866, c. 299, s. 30, v. 14, p. 337. Sec. 1124, R. S.

<sup>1</sup> For statutory provisions respecting post schools, see the chapter entitled ENLISTED MEN. These schools are administered in accordance with paragraphs 290, 310, 312, 313, 317-324, 1006, 1014-1019, 1021, 1022, and 1024 of the Army Regulations of 1895. For the duties and assignments of chaplains, see paragraphs 38-41, Army Regulations of 1895.

Monthly re-ports. **935.** Post[,] hospital and regimental chaplains shall make monthly reports to the Adjutant-General of the Army, through the usual military channels, of the moral condition and general history of the regiments or posts to which they may be attached.

Facilities in performance of duties. **936.** It shall be the duty of commanders of regiments, hospitals, and posts to afford to chaplains, assigned to the same for duty, such facilities as may aid them in the performance of their duties.

# CHAPTER XXVI.

## COMMISSIONED OFFICERS.

Par.	Par.
937. Appointments to be to arm of service.	946. Promotion of enlisted men; qualifications.
338. Promotion by seniority.	947. Examination board.
939. Assignment and transfer of officers.	948. Examinations; certificates of eligibility.
940. Commissions.	949. Effect of a court-martial.
941. Examination for promotion of all officers below major.	950. Pay during absence.
942. Examination of officers appointed from civil life; composition of boards; failure.	951. Leave on full pay.
943. Officers from civil life may waive board of similar character.	952. Transfers to the staff.
944. Cadets to be commissioned second lieutenants in any arm or corps in which a vacancy exists; additional second lieutenants.	953. Leaving port on tender of resignation.
945. Graduates to receive pay as second lieutenants from graduation.	954. Accepting diplomatic or consular office.
	955. Restoration of dismissed officers.
	956. Officers dropped for desertion.
	957. Officers dismissed by President may demand trial.

## APPOINTMENTS.

**937.** Hereafter all appointments in the line of the Army shall be by commission in an arm of the service and not by commission in any particular regiment.<sup>1</sup> *Sec. 2, act of October 1, 1890 (26 Stat. L., 562).*

Appointments to be to arm of service.

<sup>1</sup>An appointment, or commission, in order to take effect at all must be accepted; but, when accepted, it takes effect as of and from its date, i. e., the date on which it is completed by the signature of the appointing power, or that as and from which it purports in terms to be operative. *Dig. J. A. Gen., 149.* See also *Marbury v. Madison*, 1 Cranch, 137; *U. S. v. Bradley*, 10 Pet., 304; *U. S. v. Le Baron*, 19 How., 78; *Montgomery v. U. S.*, 5 C. Cls. R., 97. See, also, chapter entitled THE EXECUTIVE.

The power of the President to fill a vacancy in the Army, during a recess of the Senate, may be exercised by a letter from the Secretary of War, and such a letter may constitute his commission, there being no law which prescribes the form of a military commission. *O'Shea v. U. S.*, 28 C. Cls. R., 392. Where the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. *Collins v. U. S.*, 14 C. Cls. R., 22; *Dig. J. A. Gen., 150.* An officer of the Army or Navy of the United States does not hold his office by contract, but at the will of the sovereign power. *Crenshaw v. U. S.*, 134 U. S., 98. For statutory provisions respecting appointments to the lowest grades in the several staff corps see the chapters so entitled.

## PROMOTIONS.

Promotion by seniority. Oct. 1, 1890, v. 26, p. 562.

**938.** That hereafter promotion to every grade in the Army, corps, or department of the service, shall, subject to the examination hereinafter provided for, be made according to seniority in the next lower grade of that arm, corps, or department: *Provided*, That in the line of the Army all officers now above the grade of second lieutenant shall, subject to such examination, be entitled to promotion in accordance with existing laws and regulations. *Act of October 1, 1890 (26 Stat. L., 562).*

Assignment and transfer of officers. Sec. 2, *ibid.*

**939.** That officers of [all] grades in each arm of the service shall be assigned to regiments, and transferred from one regiment to another, as the interests of the service may require, by orders from the War Department, and hereafter all appointments in the line of the Army shall be by commission in an arm of the service, and not by commission in any particular regiment.<sup>1</sup> *Sec. 2, ibid.*

<sup>1</sup> APPOINTMENT AND PROMOTION OF COMMISSIONED OFFICERS.

Notices of appointments and promotions are issued by the War Department, through the Adjutant-General of the Army. (Par. 20, A. R., 1895.)

Appointment to the grade of general officer is made by selection from the Army. (Par. 21, *ibid.*)

Promotions in established staff corps and departments to include the grade of colonel will be made by seniority, subject to the examinations required by law. (Par. 22, *ibid.*)

Promotions in the line of the Army to include the grade of colonel, in each arm of the service, will be made by seniority, subject to the examinations required by law, except that all officers of the line of the Army in service October 1, 1890, above the grade of second lieutenant, will, subject to the prescribed examinations, be promoted in accordance with the regulations existing on that date. (Par. 23, *ibid.*)

A civilian to be eligible for appointment must be a citizen of the United States, unmarried, between 21 and 27 years of age, must be examined and approved as to habits, moral character, mental and physical ability, education and general fitness for the service, by a board convened and constituted as provided in paragraph 25 for the final competitive examination of soldiers. (Par. 31, *ibid.*)

Section 3 of the act of June 18, 1878 (20 Stat. L., 145), which contained the requirement that all vacancies occurring in the grade of second lieutenant should be filled from the graduates of the Military Academy, so long as any such remained in the service unassigned, and that vacancies then remaining should be filled by the promotion of meritorious non-commissioned officers, and that any vacancies remaining after the exhaustion of the two classes above named might be filled by the appointment of persons from civil life, was expressly repealed by section 5 of the act of July 30, 1892. (27 Stat. L., 336.) The Executive policy in respect to appointments to the grade of second lieutenant in the line of the Army is now embodied in paragraph 24, Army Regulations of 1895, which provides that "Vacancies in the grade of second lieutenant existing on the 1st day of July each year are filled by appointment, in order, as follows: (1) From graduates of the United States Military Academy; (2) from enlisted men of the Army found duly qualified; (3) from civil life. (Par. 24, A. R. 1895.)

So much of section 1218, Revised Statutes, as amended by the act of May 13, 1884 (23 Stat. L., 21), as requires that "No person who held a commission in the Army or Navy of the United States at the beginning of the late rebellion, and afterwards served in any capacity in the military, naval, or civil service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion, shall be appointed to any position in the Army or Navy of the United States," was repealed by the act of March 31, 1896 (29 Stat. L., 235).

The requirement of section 1218, Revised Statutes, as amended by the act of May 13, 1884 (23 Stat. L., 21), that no person who held a commission in the Army or Navy at the beginning of the late rebellion, and afterward served in any capacity in the military, naval or civil service of the so-called Confederate States, shall be appointed to any position in the Army or Navy of the United States was repealed by the act of March 31, 1896.

## HISTORICAL NOTE.

The rule of promotion in the line of the Army, as stated in paragraph 22 of the Regulations of 1889, required that "promotions to the rank of captain will be made

## COMMISSIONS.

**940.** That hereafter the commissions of all officers under the direction and control of the Secretary of the Treasury, the Secretary of War, the Secretary of the Navy, and the Secretary of Agriculture shall be made out and recorded in the respective Departments under which they are to serve, and the Department seal affixed thereto, any laws to the contrary notwithstanding: *Provided*, That the said seal shall not be affixed to any such commission before the same shall have been signed by the President of the United States. *Act of March 28, 1896 (29 Stat. L., 75).*

Commissions.  
Mar. 28, 1896, v.  
29, p. 75.

## EXAMINATIONS FOR PROMOTION.

**941.** That the President be, and he is hereby, authorized to prescribe a system of examination of all officers of the Army below the rank of major to determine their fitness for promotion, such an examination to be conducted at such times anterior to the accruing of the right to promotion as may be best for the interests of the service: *Provided*, That the President may waive the examination for promotion to any grade in the case of any officer who in pursuance of existing law has passed a satisfactory examination for such grade prior to the passage of this act: *And provided*, That if any officer fails to pass a satisfactory

Examinations  
for promotion of  
all officers below  
major.  
Sec. 3, Oct. 1,  
1890, v. 26, p. 562.

Where officer  
passed examina-  
tion under exist-  
ing law.

Failure to pass,  
etc.

regimentally, to major, lieutenant-colonel, and colonel, according to arm of service." This rule, which was replaced by the act of October 1, 1890 (paragraph 938, *supra*), had its origin in an order of the Secretary of War, dated May 26, 1801, which declared that "promotions to the rank of captain shall be made regimentally, and to the rank of major and lieutenant-colonel in the lines of the artillery and infantry, respectively." This order was supplemented by another, issued on May 7, 1808, making the above rule for promotion in the infantry and artillery applicable to the cavalry and rifle-men.

The earliest Congressional action on the subject of promotion in the Army is contained in the fifth section of the act of June 26, 1812 (2 Stat. L., 764), which provided that thereafter "the promotion shall be made through the lines of artillerists, light artillery, dragoons, riflemen, and infantry, respectively, according to established rule." The rule therein referred to is that which was established by the executive order as above stated, and the effect of the statute was to give the order a legislative sanction. Subsequently, by section 12 of the act of March 30, 1814 (3 Stat. L., 113), it was provided "that from and after the passage of this act, promotions may be made through the whole Army in its several lines of light artillery, light dragoons, artillery, infantry and riflemen, respectively." Since the enactment of this last provision, which continued in force down to the revision of the statutes, promotion to the rank of captain have uniformly been made regimentally; so that the construction given thereto, in practice, has been that it made no change or modification of the previously existing rules. According to this construction (which was acted upon for about sixty years) the act of 1814, while it contemplated that promotions should be made in the several lines or arms through the whole Army, and that officers should be promoted only in their respective lines or arms, did not prescribe how promotions within the lines or arms should be made, whether regimentally or lineally. As thus understood—and the language of the act is susceptible of that interpretation—there was no conflict between it and the rule adverted to.

Section 1204, Revised Statutes, contains substantially a re-enactment of the provision above quoted from the act of 1814. When embodying that provision in the Revised Statutes, it is reasonable to presume that Congress was familiar with the construction which had been placed thereon, and so long acted upon by the Executive Department, and that if it had been the intention of that body to introduce a different rule on the subject of promotion, different phraseology would have been chosen to signify such design. By adopting the language of the previous statute the fair inference is that its construction was acquiesced in, and that no change in the law of promotion was intended. (17 Opin. Att. Gen., 65.) See, also, paragraph 980, *post*.



Retirement on physical disability contracted in line of duty.

Failure for other reason.  
Failure on re-examination.

Examination of officers appointed from civil life, etc.

Composition of boards.

Practical fitness.  
Failure.

No existing law to limit retirement.

Officers from civil life may waive board of similar character.

July 27, 1892, v. 27, p. 276.

Cadets to be commissioned second lieutenants in any arm or corps in which vacancy exists.

May 17, 1886, v. 24, p. 50.

examination and is reported unfit for promotion, the officer next below him in rank, having passed said examination, shall receive the promotion: *And provided*, That should the officer fail in his physical examination, and be found incapacitated for service by reason of physical disability contracted in line of duty he shall be retired with the rank to which his seniority entitled him to be promoted; but if he should fail for any other reason he shall be suspended from promotion for one year, when he shall be reexamined, and in case of failure on such reexamination he shall be honorably discharged with one year's pay from the Army.<sup>1</sup>

**942.** That the examination of officers appointed in the Army from civil life, or of officers who were officers of volunteers only, or were officers of the militia of the several States called into the service of the United States, or were enlisted men in the regular or volunteer service, either in the Army, Navy, or Marine Corps, during the war of the rebellion, shall be conducted by boards composed entirely of officers who were appointed from civil life or of officers who were officers of volunteers only during said war, and such examination shall relate to fitness for practical service and not to technical and scientific knowledge; and in case of failure of any such officer in the re-examination hereinbefore provided for; he shall be placed upon the retired list of the Army; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for. *Sec. 3, act of October 1, 1890 (26 Stat. L., 562).*

**943.** That officers entitled by this section to examination by a board composed entirely of officers who were appointed from civil life, or who were officers of volunteers only during the war, may, by written waiver filed with the War Department, relinquish such right, in which case the examination of such officers shall be conducted by boards composed as shall be directed by the Secretary of War. *Sec. 1, act of July 27, 1892 (27 Stat. L., 276).*

#### PROMOTION OF CADETS.

**944.** That when any cadet of the United States Military Academy has gone through all its classes and received a regular diploma from the academic staff, he may be promoted and commissioned as a second lieutenant in any arm

<sup>1</sup>Section 2 of the act of May 17, 1886 (24 Stat. L., 276) provides "that the examination of officers of the Corps of Engineers and Ordnance Department who were officers or enlisted men in the regular or volunteer service, either in the Army, Navy, or the Marine Corps, during the War of the Rebellion, shall be conducted by boards composed in the same manner as for the examination of other officers of their respective corps and department; and the examinations shall embrace the same subjects prescribed for all other officers of similar grades in the Corps of Engineers and Ordnance Department, respectively."

or corps of the Army in which there may be a vacancy and the duties of which he may have been judged competent to perform; and in case there shall not at the time be a vacancy in such arm or corps, he may, at the discretion of the President, be promoted and commissioned in it as an additional second lieutenant, with the usual pay and allowances of a second lieutenant, until a vacancy shall happen. *Act of May 17, 1886 (24 Stat. L., 50).*

Additional second lieutenants.

**945.** That every cadet who has heretofore graduated or may hereafter graduate at the West Point Military Academy, and who has been or may hereafter be commissioned a second lieutenant in the Army of the United States, under the laws appointing such graduates to the Army, shall be allowed full pay as second lieutenant from the date of his graduation to the date of his acceptance of and qualification under his commission and during his graduation leave, in accordance with the uniform practice which has prevailed since the establishment of the Military Academy. *Act of December 20, 1886 (24 Stat. L., 351).*

Graduates to receive pay as second lieutenants from graduation.  
Sec. 1261, R. S.  
Dec. 20, 1886, v. 24, p. 351.

#### PROMOTION OF ENLISTED MEN.

**946.** That the President be, and he is hereby, authorized to prescribe a system of examination of enlisted men of the Army, by such boards as may be established by him, to determine their fitness for promotion to the grade of second lieutenant: *Provided*, That all unmarried soldiers under thirty years of age, who are citizens of the United States, are physically sound, who have served honorably not less than two years in the Army, and who have borne a good moral character before and after enlistment, may compete for promotion under any system authorized by this act.<sup>1</sup> *Act of July 30, 1892 (27 Stat. L., 336).*

Promotion of enlisted men.  
Sec. 1214, R. S.

Qualifications.  
July 3, 1892, v. 27, p. 336.

**947.** That the members and recorder of such boards as may be established by the President, under the provisions

Examination board.  
Sec. 2, *ibid.*

<sup>1</sup>Under the authority conferred by this statute, the following system of examination has been prescribed:

With a view to the selection of proper enlisted men of the Army as "candidates for promotion" to the grade of second lieutenant, each department commander will, as soon as practicable after March 15 of each year, convene a board of five officers for the preliminary examination of the soldiers of his command who are legally qualified applicants for a commission, to determine their eligibility for the competitive examination. This board will institute a rigid inquiry into the character, capacity, record, and qualifications of the several candidates, and will recommend none for competitive examination who are not able to establish their fitness for promotion to the entire satisfaction of the board. On September 1 of each year the War Department will convene a board of five officers for the final competitive examination to determine the fitness and order of merit for promotion of the soldiers who have successfully passed the preliminary examination. Two members of each board will be officers of the Medical Department. (Par. 25, A. R., 1895.)

Each enlisted man recommended in accordance with the law and the foregoing regulation will receive from the Adjutant-General of the Army a certificate of eligibility for appointment to the grade of second lieutenant and will be known as a "candidate" for promotion. He will have the title "candidate" prefixed to his name in all rolls, returns, orders, and correspondence in which it appears, and will be entitled to wear the candidate's stripes on the sleeves of uniform coat, blouse, and overcoat so long as he holds this specially honorable position. The candidate's stripe will be worn on the upper half of each cuff. It will consist of a double stripe running the length of the cuff, pointed at the upper end and with a small button below the point of the stripe; for uniform coat, of gold braid; for blouse and over-

of the preceding section, shall be sworn in every case to discharge their duties honestly and faithfully; and the boards may examine witnesses, and take depositions, for which purposes they shall have such powers of a court of inquiry as may be necessary. *Sec. 2, ibid.*

Examinations.  
*Sec. 3, ibid.*

948. That the vacancies in the grade of second lieutenant heretofore filled by the promotion of meritorious non-commissioned officers of the Army, under the provisions of section three of the act approved June eighteenth, eighteen hundred and seventy-eight, shall be filled by the appointment of competitors favorably recommended under this act, in the order of merit established by the final examination.

Certificates of  
eligibility.

Each man who passes the final examination shall receive a certificate of eligibility, setting forth the subjects in which he is proficient and the especial grounds upon which the recommendation is based: *Provided*, That not more than two examinations shall be accorded to the same competitor. *Sec. 3, ibid.*

Effect of court-  
martial.  
*Sec. 4, ibid.*

949. That all rights and privileges arising from a certificate of eligibility may be vacated by sentence of a court-martial, but no soldier, while holding the privileges of a certificate, shall be brought before a garrison or regimental court-martial or summary court. *Sec. 4, ibid.*

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coat, of cloth of same color as facings of uniform; width of braid or cloth, one-quarter inch; width of space between braid, one-eighth inch. (Par. 26, *ibid.*)

The eligibility of a candidate for appointment as second lieutenant and his privileges as candidate terminate the 1st of September next succeeding his competitive examination, unless he shall again be recommended on competitive examination. A candidate who becomes ineligible by reason of age will be entitled to wear the candidate's stripe on the left sleeve so long as he maintains his good standing in the service. Having passed a departmental board, but having failed to pass the competitive board, he may again be examined by the competitive board on proper application made through department headquarters; he will not be required to pass a departmental board a second time. An applicant who twice fails in competitive examination to obtain a certificate of eligibility as candidate for promotion can not again compete for that position. (Par. 27, *ibid.*)

Candidates who may be guilty of misconduct will be promptly reported to the Adjutant-General of the Army, through regimental and department headquarters, the report to contain a full statement of the alleged misconduct, with names of witnesses. The department commander will see that the candidate has a fair and impartial hearing, and will forward the report for the decision of the Secretary of War. (Par. 28, *ibid.*)

Candidates for promotion will not be deprived of the privileges of their position unless by sentence of a general court-martial or the order of the Secretary of War, except by operation of law or regulations. While holding the privileges of that position they will not be brought before a summary or field officer's court, or a garrison or regimental court-martial. (Par. 29, *ibid.*)

A soldier to be eligible for the position of candidate for promotion must be a citizen of the United States, unmarried, between 21 and 30 years of age on the 1st of September following his preliminary examination, and of good moral character both before and after enlistment. An applicant will not be ordered for the preliminary examination unless it is apparent that on the 1st of September next following he will have served honorably not less than two years, exclusive of technical service due to furlough or other absence from duty in his own interest; (a) nor for the final competitive examination unless he shall have so served. Applications will be made to department commanders on or before February 1 of each year, and company commanders in forwarding them will certify all furloughs had by applicants, stating under what authority they were granted. (Par. 30, *ibid.*)

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a Referring to paragraph 30, Army Regulations, the phrase "exclusive of technical service due to furlough or other absence from duty in his own interest" will not apply to leave of absence or furlough granted to an enlisted man during the first two years of enlistment not exceeding fifteen days in all, nor to such longer furlough as is now authorized by paragraph 107, Army Regulations, in a case which may be determined by competent authority to be extraordinary. (Decision Assistant Secretary of War, January 13, 1896. Circular No. 2, A. G. O., 1896.)

## LEAVES OF ABSENCE—SICK LEAVES.

**950.** Officers when absent on account of sickness or wounds, or lawfully absent from duty and waiting orders, shall receive full pay; when absent with leave, for other causes, full pay during such absence not exceeding in the aggregate thirty days in one year, and half pay during such absence exceeding thirty days in one year. When absent without leave, they shall forfeit all pay during such absence, unless the absence is excused as unavoidable.<sup>1</sup>

Pay during absence.

Aug. 3, 1861, s. 20, v. 12, p. 290; Mar. 3, 1863, s. 31, v. 12, p. 736; Jan. 20, 1874, s. 11, v. 18, p. 145; July 15, 1870, s. 24, v. 16, p. 320; May 8, 1874, v. 18, p. 43, Sec. 1265, R. S.

**951.** That an act approved May eighth, eighteen hundred and seventy-four, in regard to leave of absence of Army officers, be, and the same is hereby, so amended that all officers on duty shall be allowed, in the discretion of the Secretary of War, sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the same be taken once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years, or four months if taken once only in four years.<sup>2</sup> *Act of July 29, 1876 (19 Stat. L., 102).*

Leave on full pay.

July 29, 1876, v. 19, p. 102.

<sup>1</sup>An officer of the Army who is ordered, even on his own request, to proceed to a particular place, including his home, and "there await orders," reporting thence by letter to the Adjutant-General of the Army and to the headquarters of the Department to which he then belongs, is not an officer "absent from duty with leave" within the act of March 3, 1863 (12 Stat. L., 736), which enacts that "any officer absent from duty with leave, except from sickness or wounds, shall during his absence receive half the pay and allowances prescribed by law and no more." Such an officer is waiting orders in pursuance of law, but is not absent from duty on leave. *U. S. v. Williamson*, 23 Wall., 411.

This statute is amendatory of the act of May 8, 1874, which provided "that all officers on duty at any point west of a line drawn north and south through Omaha City, and north of a line drawn east and west upon the southern boundary of Arizona, shall be allowed sixty days' leave of absence without deduction of pay or allowances: *Provided*, That the same is taken but once in two years: *And provided further*, That the leave of absence may be extended to three months, if taken once only in three years; or four months if taken once only in four years."

<sup>2</sup> LEAVES OF ABSENCE.

In time of peace the commander of a post may grant leaves of absence not to exceed seven days at one time, or in the same month; and he may give permission to apply to the proper authority for extension of such leaves for a period not to exceed twenty-three days. (Par. 44, A. R., 1895.)

The commander of a post may take leave of absence not to exceed seven days at one time, or in the same month, reporting the fact to his next superior commander. (Par. 45, *ibid.*)

A department commander may grant leaves for one month and the Commanding General of the Army for two months; or they may extend to such periods those granted by subordinate commanders. Applications for leaves of more than two months' duration, or from officers of the staff corps and departments for more than one month, or from department commanders desiring leaves of absence to pass beyond the territorial limits of their commands, will be forwarded to the Adjutant-General of the Army for the action of the Secretary of War. (Par. 46, *ibid.*)

An application for leave must state its desired duration. Intermediate commanders will indorse their recommendations upon the application. (Par. 47, *ibid.*)

Chiefs of bureaus may grant leaves for one month to officers of their respective corps serving under their immediate direction, or extend to that period those already granted to such officers. (Par. 48, *ibid.*)

Leaves of absence for three months, from date of graduation, will be allowed to graduates of the Military Academy. They will not be counted against them in subsequent applications for leave, but can not be postponed to another time. (Par. 49, *ibid.*)

For statutes regulating pay during leave of absence, see the title "Pay during absence" in the chapter entitled THE PAY DEPARTMENT.

## SICK LEAVES.

The Commanding General of the Army and department commanders have the same authority to grant leaves of absence on account of sickness as to grant ordinary

## TRANSFERS.

Transfers to the staff.

Mar. 3, 1813, c.

52, s. 4, v. 2, p. 819;

Apr. 24, 1816, c.

69, s. 9, v. 3, p. 298;

June 18, 1846, c.

29, s. 7, v. 9, p. 18.

Sec. 1205, R. S.

**952.** Officers may be transferred from the line to the staff of the Army without prejudice to their rank or promotion in the line; but no officer shall hold, at the same time, an appointment in the line and an appointment in the staff which confer equal rank in the Army. When any officer so transferred has, in virtue of seniority, obtained or become entitled to a grade of his regiment equal to the grade of his commission in the staff, he shall vacate either his commission in the line or his commission in the staff.<sup>1</sup>

## RESIGNATIONS.

Leaving post on tender of resignation.

49 art. war.

**953.** Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.<sup>2</sup> *Forty-ninth article of war.*

leaves. Permission to go beyond the limits of the command in which the applicant is stationed will be given only when the certificate of the medical officer shall state explicitly that it is necessary to afford rapid or perfect recovery. (Par. 61, A. R., 1895.)

Application for leave of absence on account of sickness will be made to the commanding officer, who will refer it to the surgeon. The surgeon will examine the applicant and should he find the leave necessary to restore health, he will submit to the commanding officer a medical certificate in the prescribed form, stating explicitly the nature, seat, and degree of the disease, wound, or disability, the cause thereof if known, and the period during which the officer has suffered from it. He will also give his opinion as to whether the disease, wound, or disability can be satisfactorily treated within the department in which the officer is stationed, or whether a change of climate or locality within the United States is necessary to afford more rapid or perfect recovery, in which case the special place or region recommended will be designated, with reasons therefor. The surgeon will also state whether, in his opinion, the disease, wound, or disability requires treatment by a specialist; and if so, the nearest place where it can be obtained; also whether the wound or disease incapacitates the officer from all duty, or whether he can perform special duty; and if so, the kind that he may undertake without endangering his ultimate cure. (Par. 62, *ibid.*)

<sup>1</sup> Officers transferred from one arm or corps to another, on mutual application, will be nominated for reappointment with rank as of the date of the commission of the junior officer previous to the transfer, and upon confirmation will be recommissioned accordingly. An officer of the lowest grade in any arm or corps who may be transferred, on his own application, to a vacancy in his grade in any other arm or corps will take rank next after the junior officer of the arm or corps to which he is transferred, and will be nominated for reappointment, with a new date of rank if necessary to fix his proper position, and upon confirmation will be recommissioned accordingly. These new appointments and commissions will determine the rank of transferred officers in their regiments and corps, as well as in the Army. (Par. 42, A. R., 1895.)

Officers in each arm of the service will be transferred from one regiment to another therein, as the interests of the service require, by orders from the War Department, without change of rank or commission. The transfer or exchange of company officers of a regiment will be made by the Commanding General of the Army. (Par. 43, *ibid.*) See also paragraph 697, *ante*.

<sup>2</sup> A valid resignation and an unconditional acceptance of it, accompanied by proper notification of it, operate to remove an officer from the military service. *Bennett v. U. S.*, 19 C. Cls. R., 379. And a new appointment is required to restore him to the office. 12 Op. Att. Gen., 555. An immediate and unconditional resignation severs, absolutely, an officer's connection with the Army. *Turnley v. U. S.*, 24 C. Cls. R., 317. It has been held by a United States court that "a civil officer has a right to resign his office at pleasure, and it is not in the power of the Executive to compel him to remain in office." In a case of a military officer, however, this right is subject to certain restrictions growing out of the military status. Thus, while in time of peace, an officer of the Army, in good standing, is in general entitled to tender and have accepted his resignation yet, in time of war, or when grave embarrassment to the service or prejudice to discipline may result from his leaving his duty, the acceptance of his resignation may properly be refused. And so, where he has tendered his resignation while under charges, and a failure of justice might result from allowing him to evade trial. Dig. Op. J. A. G., 662.

A military officer who has tendered his resignation, but who continues in service,

**954.** Any officer of the Army who accepts or holds any appointment in the diplomatic or consular service of the Government shall be considered as having resigned his place in the Army, and it shall be filled as a vacancy.

Accepting diplomatic or consular office.  
Mar. 30, 1868, c. 38, s. 2, v. 15, p. 58.  
Sec. 1223, R. S.

## DISMISSAL.

**955.** No officer of the Army who has been or may be dismissed from the service by the sentence of a general court-martial, formally approved by the proper reviewing authority, shall ever be restored to the military service, except by a reappointment confirmed by the Senate.<sup>1</sup>

Restoration of dismissed officers.  
July 20, 1868, c. 185, v. 15, p. 125.  
Sec. 1228, R. S.

**956.** The President is authorized to drop from the rolls of the Army for desertion any officer who is absent from duty three months without leave; and no officer so dropped shall

Officers dropped for desertion.  
Art. of War 99.  
Art. of War 106.  
July 15, 1870, c. 294, s. 17, v. 16, p. 319; July 13, 1866, c. 176, s. 5, v. 14, p. 92.  
Sec. 1229, R. S.

doing actual duty, is entitled to pay up to the time he is notified of the acceptance of his resignation. *Barger v. U. S.*, 6 C. Cls. R., 35; *Dig. J. A. Gen.*, 662, 663.

A mere offer to resign, or tender of resignation is revocable at any time before acceptance. But after an acceptance, and before effect has been given to the same by notice, the offer can not be withdrawn, or materially modified by the act of the officer alone, but the consent of the appointing power is also necessary. *Dig. J. A. G.*, 663.

The acceptance of an officer's resignation becomes operative and severs him from the military service upon his receiving either actual or constructive notice of such acceptance. *Dig. J. A. G.*, 663.

While a tender of his resignation by an insane officer is, in general, without legal effect, and incapable of being legally accepted, yet where a resignation so tendered was, in the absence, at the War Department, of any knowledge of his insanity, formally accepted, held that the acceptance could not be legally revoked, and that the appointment to the vacancy was valid and operative. *Dig. J. A. G.*, 663. When an officer tenders his resignation, and the question of his sanity is passed upon by his commanding officer, and it is by him determined that he is of sane mind, a court can not re-examine the question. *Blake v. U. S.*, 13 C. Cls. R., 402.

Where an officer appointed during a recess of the Senate, after taking the oath of office and notifying the Department of his acceptance, is ordered to return the appointment, his obeying the order is not a resignation. *O'Shea v. U. S.*, 28 C. Cls. R., 392.

An officer who places his conditional resignation in the hands of his commanding officer, to be forwarded by that officer upon a breach of the said condition, of which breach such commanding officer is to be the judge, and authorizes him to insert a date in such resignation and to forward it for acceptance, is held to have made a valid tender of his resignation, and, upon its acceptance by the President, such officer ceases to be an officer of the Army. *Mimmack v. U. S.*, 97 U. S., 426, 436; 12 Opin. Att. Gen., 555.

If an officer's connection with the service has been legally severed by resignation, dismissal, or otherwise, he can again enter only by the appointment of the President, with the consent of the Senate. *Montgomery v. U. S.*, 19 C. Cls. R., 338; *Miller v. U. S.*, *ibid*, 338; *Mimmack v. U. S.*, 97 U. S., 426; *McElrath v. U. S.*, 102 U. S., 426; *Blake v. U. S.*, 103 U. S., 227; *Keyes v. U. S.*, 109 U. S., 336, 339.

<sup>1</sup>Dismissal by Executive order is quite distinct from dismissal by sentence. The latter is a *punishment*; the former is *removal from office*. The power to *dismiss* which, as being an incident to the power to appoint public officers, had been regarded since 1789 as vested in the President by the Constitution was, for the first time, by section 5 of the act of July 13, 1866 (re-enacted in the second clause of the present Ninety-ninth Article of War and in section 1229, Revised Statutes), expressly divested by Congress, in so far as respects its exercise in time of peace. By the statute it is now authorized only in time of war. *Dig. J. A. G.*, 369, par. 1.

The practical results of this statute, in connection with other provisions of law bearing upon the subject, are these: That in time of war the President may dismiss an officer from service at any moment and for any cause; that in time of peace he may dismiss him for cause, with the co-operation of a court-martial; or remove him without cause with the consent of the Senate. *Street v. U. S.*, 24 C. Cls. R., 248; *Blake v. U. S.*, 103 U. S., 227; *McElrath v. U. S.*, 102 U. S., 426; *Fletcher v. U. S.*, 26 C. Cls. R., 541.

The President has the power to remove an officer of the Army by the appointment of another in his place, by and with the advice and consent of the Senate, and such power is not withdrawn by the provisions of section 5 of the act of July 13, 1866 (section 1229, Revised Statutes), and this provision does not restrict the power of the President, by and with the advice and consent of the Senate, to displace officers of the Army and Navy by the appointment of others in their places. *Keyes v. U. S.*, 109 U. S., 336, 339; *Blake v. U. S.*, 103 U. S., 227; *McElrath v. U. S.*, 102 U. S., 426; *Mimmack v. U. S.*, 97 U. S., 426; *U. S. v. Corson*, 114 U. S., 619; *Montgomery v. U. S.*, 19 C. Cls. R., 370; *Bonnett v. U. S.*, *ibid*, 379; *Palen v. U. S.*, *ibid*, 389; *McBlair v. U. S.*, *ibid*, 528; *Vanderslice v. U. S.*, *ibid*, 480; 15 Opin. Att. Gen., 407.

be eligible for reappointment. And no officer in the military, or naval service shall in time of peace be dismissed from service except upon and in pursuance of the sentence of a court-martial to that effect, or in commutation thereof.<sup>1</sup>

Officers dismissed by President may demand trial.

Mar. 3, 1865, c. 79, s. 12, v. 13, p. 489; June 22, 1874, c. 392, s. 2, v. 18, p. 192.

Sec. 1230, R. S.

**957.** When any officer, dismissed by order of the President, makes, in writing, an application for trial, setting forth, under oath, that he has been wrongfully dismissed, the President shall, as soon as the necessities of the service may permit, convene a court-martial, to try such officer on the charges on which he shall have been dismissed. And if a court-martial is not so convened within six months from the presentation of such application for trial, or if such court, being convened, does not award dismissal or death as the punishment of such officer, the order of dismissal by the President shall be void.<sup>2</sup>

#### DETAILS TO COLLEGES.

Par.

958. Details to college duty.

959. Ordnance stores, etc.

960. Detail as professor in a college.

Par.

961. Detail of retired officers.

962. Number of officers increased.

963. Detail of retired officers not limited; issues of ordnance.

#### DETAILS FROM THE ACTIVE LIST.

Details to college duty.

Sept. 26, 1888, v. 25, p. 491.

Sec. 1225, R. S.

**958.** The President may, upon the application of any established military institute, seminary or academy, college or university within the United States, having capacity to educate at the same time not less than one hundred and fifty male students, detail an officer of the Army or Navy to act as superintendent or professor thereof; but the number of officers so detailed shall not exceed [one hundred]<sup>3</sup> from the Army and ten from the Navy, being a maximum of one hundred and ten, at any time, and they shall be apportioned throughout the United States, first, to those State institutions applying for such detail that are required to provide instruction in military tactics under the pro-

Limit.

<sup>1</sup> The jurisdiction to find and determine the fact of desertion, under this section, is vested in the President alone, and his decision thereon can not be reviewed by the courts. *Newton v. U. S.*, 18 C. Cls. R., 435. The discharge of an officer does not relieve the Government from its obligations until he is notified of the fact and actually discharged from service. *Gould v. U. S.*, 19 C. Cls. R., 593. A summary dismissal of an officer does not properly take effect until the order of dismissal, or an official copy of the same, is delivered to him, or he is otherwise officially notified of the fact of his dismissal. *Dig. J. A. G.*, 370, par. 5. A dismissal of an officer by Executive order does not operate to disqualify him for reappointment to military office, or for appointment to civil office under the United States. *Ibid.* 370, par. 7.

<sup>2</sup> To take advantage of the benefit conferred by this section, the officer must apply for trial within a reasonable time after dismissal, or acquiescence will be presumed. A delay of nine years in a particular case held to create such presumption of acquiescence. *Newton v. U. S.*, 18 C. Cls. R., 435; *Germaine v. U. S.*, 26, *ibid.*, 383.

Where the President is authorized by law to reinstate a discharged Army officer, he may do so without the advice and consent of the Senate. *Collins v. U. S.*, 15 C. Cls. R., 22. For a list of officers so reinstated see *Collins Case*, 14 C. Cls. R., 568, 571.

<sup>3</sup> Increased from 50 to 75 by the act of January 13, 1891 (26 Stat. L., 716), and to 100 by the act of November 1, 1893 (28 Stat. L., 7), (par. 962, post).

visions of the act of Congress of July second, eighteen hundred and sixty-two, donating lands for the establishment of colleges where the leading object shall be the practical instruction of the industrial classes in agriculture and the mechanic arts, including military tactics; and after that, said details to be distributed, as nearly as may be practicable, according to population.

959. The Secretary of War is authorized to issue, at his discretion and under proper regulations to be prescribed by him, out of ordnance and ordnance stores belonging to the Government, and which can be spared for that purpose, such number of the same as may appear to be required for military instruction and practice by the students of any college or university under the provisions of this section, and the Secretary shall require a bond in each case, in double the value of the property, for the care and safe keeping thereof, and for the return of the same when required: *Provided*, That nothing in this act shall be so construed as to prevent the detail of officers of the Engineer Corps of the Navy as professors in scientific schools or colleges as now provided by act of Congress approved February twenty-sixth, eighteen hundred and seventy-nine, entitled "An act to promote a knowledge of steam-engineering and iron-ship building among the students of scientific schools or colleges in the United States;" and the Secretary of War is hereby authorized to issue ordnance and ordnance stores belonging to the Government on the terms and conditions hereinbefore provided to any college or university at which a retired officer of the Army may be assigned as provided by section twelve hundred and sixty of the Revised Statutes.<sup>1</sup> *Act of September 26, 1888 (25 Stat. L., 491).*

Ordnance stores  
for colleges.  
Sept. 26, 1888, v.  
25, p. 491.

#### DETAILS FROM THE RETIRED LIST.

960. Any retired officer may, on his own application, be detailed to serve as professor in any college. But while so serving, such officer shall be allowed no additional compensation.

Detail as professor in a college.  
July 15, 1870, c.  
294, s. 23, v. 16, p.  
320; Feb. 27, 1877,  
c. 69, v. 19, p. 242.  
Sec. 1260, R. S.

961. That upon the application of any college, university, or institution of learning incorporated under the laws of any State within the United States, having capacity at the same time to educate not less than one hundred and fifty male students, the President may detail an officer of the Army on the retired list to act as president, superintendent,

Detail of retired  
officers.  
June 16, 1880, v.  
21, p. 113.

<sup>1</sup>This statute repeals and replaces section 1225, Revised Statutes, as amended by the act of July 5, 1884, "saving always, however, all acts and things done under the said amended section as heretofore existing."



tendent, or professor thereof; and such officer may receive from the institution to which he may be detailed the difference between his retired and full pay, and shall not receive

Additional pay. any additional pay or allowance from the United States.<sup>1</sup>  
*Act of June 16, 1880 (21 Stat. L., 113).*

Number of officers increased. **962.** That section twelve hundred and twenty-five of the Revised Statutes, concerning details of officers of the Army and Navy to educational institutions, be, and the same is hereby, amended so as to permit the President to detail under the provisions of said act not to exceed one hundred officers of the Army of the United States; and no officer shall be thus detailed who has not had five years service in the Army and no detail to such duty shall extend for more than four years and officers on the retired list of the Army may upon their own application be detailed to such duty and when so detailed shall receive the full pay of their rank,<sup>2</sup> and the maximum number of officers of the Army and Navy to be detailed at any one time under the provisions of the act approved January thirteenth, eighteen hundred and ninety-one, amending section twelve hundred and twenty-five of the Revised Statutes as amended by an act approved September twenty-sixth, eighteen hundred and eighty-eight, is hereby increased to one hundred and ten. *Act of November 2, 1893 (28 Stat. L., 7).*

Nov. 1, 1893, v. 28, p. 7.

Duration.

Limit as to number.

Detail of retired officers to colleges not limited.

Issues of ordnance, etc.

Aug. 6, 1894, v. 28, p. 235.

**963.** That nothing in the Act entitled "An Act to increase the number of officers of the Army to be detailed to colleges," approved November third, eighteen hundred and ninety-three, shall be so construed as to prevent, limit, or restrict the detail of retired officers of the Army at institutions of learning under the provisions of section twelve hundred and sixty, Revised Statutes, and the Act making appropriations for the support of the Army, and so forth, approved May fourth, eighteen hundred and eighty, nor to forbid the issue of ordnance and ordnance stores, as provided in the Act approved September twenty-sixth, eighteen hundred and eighty-eight, amending section twelve hundred and twenty-five, Revised Statutes, to the institutions at which retired officers may be so detailed; and said Act of November third, eighteen hundred and ninety-three, and said Act of May fourth, eighteen hundred and eighty, shall not be

<sup>1</sup> The act of November 3, 1893 (28 Stat. L., 7), authorized officers on the retired list, thereafter detailed, on college duty, to receive the full pay of their grades. This statute was repealed by the act of August 6, 1894 (28 Stat. L., 233). The act of May 4, 1880 (21 Stat. L., 509) authorizes retired officers, detailed at colleges, to receive the difference between the active and retired pay of their grades from the institution to which they are detailed.

<sup>2</sup> This provision repealed as to retired officers detailed since August 6, 1894, the date of the repealing statute. The effect of this statute is to give full pay to all retired officers detailed for college duty between November 3, 1893, and August 6, 1894. Those detailed under other statutes are not entitled to such increase.

construed to allow the full pay of their rank to retired officers detailed under said section twelve hundred and sixty, Revised Statutes, and said Act of May fourth, eighteen hundred and eighty. *Act of August 6, 1894 (28 Stat. L., 235).* Pay not increased.

RETIREMENT OF OFFICERS.<sup>1</sup>

Par.	Par.
964. Retirement upon officer's own application after forty years' service; same on application, at discretion of President, after thirty years' service.	973. Revision by the President.
965. The same; compulsory retirement at age 64.	974. Disability incident to service.
966. Unlimited retired list.	975. Disability not incident to service.
967. Retirement at discretion of President after forty-five years' service.	976. Officers entitled to a hearing.
968. Retirement for disability.	977. To be retired on actual rank.
969. Composition of retiring board.	978. Officers retired on actual rank.
970. Oath of members.	979. Status of retired officers.
971. Powers and duties.	980. Vacancies caused by retirement.
972. Findings.	981. The limited retired list.
	982. Transfers from limited to unlimited list.
	983. Service for longevity and retirement.
	984. Pay of retired officers.
	985. Rights and liabilities.

964. When an officer has served forty consecutive years as a commissioned officer, he shall, if he makes application therefor to the President, be retired from active service and placed upon the retired list. When an officer has been thirty years in the service, he may, upon his own application, in the discretion of the President, be so retired, and placed on the retired list.<sup>2</sup> Retirement upon officer's own application after 40 years' service.  
Aug. 3, 1861, c. 42, s. 15, v. 12, p. 289; July 15, 1870 c. 294, ss. 4, 5, v. 16, p. 317.  
Sec. 1243, R. S.

965. That on and after the passage of this act when an officer has served forty years either as an officer or soldier in the regular or volunteer service, or both, he shall, if he make application therefor to the President, be retired from active service and placed on the retired list, and, when an officer is sixty-four years of age, he shall be retired from active service and placed on the retired list: *Provided further*, That the General of the Army, when retired, shall be retired without reduction in his current pay and allowances; and no act now in force shall be so construed as to limit or restrict the retirement of officers as herein provided for.<sup>3</sup> *Act of June 30, 1882 (22 Stat. L., 117).* The same; compulsory retirement at age 64.  
June 30, 1882, v. 22, p. 117.

<sup>1</sup>For statutes regulating the pay of retired officers, see the title "Pay of officers" in the chapter entitled THE PAY DEPARTMENT. See, also, paragraph 984, *post*.

<sup>2</sup>The act of June 17, 1878, authorizes service as an officer of volunteers during the War of the Rebellion, or as an enlisted man in the armies of the United States, regular or volunteer, to be credited in the computation of service for longevity pay or retirement.

<sup>3</sup>Compare paragraph 966, *post*; these statutes created the unlimited retired list. See, also, note 1, to paragraph 966, *post*.

Unlimited re-  
tired list.

Mar. 3, 1883, v.  
22, p. 457.

**966.** That nothing contained in the act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and eighty three, approved June thirtieth, eighteen hundred and eighty-two, shall be so construed as to prevent, limit, or restrict retirements from active service in the Army, as authorized by law in force at the date of the approval of said act, retirements under the provisions of said act of June thirtieth, eighteen hundred and eighty-two, being in addition to those theretofore authorized by law.<sup>1</sup> *Act of March 3, 1883 (22 Stat. L., 457).*

Retirement at  
discretion of  
President after  
45 years' service,  
or at the age of 62.

July 17, 1862, c.  
200, s. 12, v. 12, p.  
596. Sec. 1244, R. S.

**967.** When any officer has served forty-five years as a commissioned officer, or is sixty-two years old, he may be retired from active service at the discretion of the President.<sup>2</sup>

Retirement for  
disability.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
289.

Sec. 1245, R. S.

**968.** When any officer has become incapable of performing the duties of his office, he shall be either retired from active service, or wholly retired from the service, by the President, as hereinafter provided.

#### RETIRING BOARDS.

Composition of  
retiring board.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
289.

Sec. 1246, R. S.

**969.** The Secretary of War, under the direction of the President, shall, from time to time, assemble an Army retiring board, consisting of not more than nine nor less than five officers, two-fifths of whom shall be selected from the Medical Corps. The board, excepting the officers selected from the Medical Corps, shall be composed, as far as may be, of seniors in rank to the officer whose disability is inquired of.

Oath of mem-  
bers.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
290.

Powers and  
duties.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
290.

Sec. 1248, R. S.

**970.** The members of said board shall be sworn in every case to discharge their duties honestly and impartially.

290. Sec. 1247, R. S.

**971.** A retiring board may inquire into and determine the facts touching the nature and occasion of the disability of any officer who appears to be incapable of performing the duties of his office, and shall have such powers of a court-martial and of a court of inquiry as may be necessary for that purpose.<sup>3</sup>

Findings.

Aug. 3, 1861, c.  
42, s. 17, v. 12, p.  
290.

Sec. 1249, R. S.

**972.** When the board finds an officer incapacitated for active service, it shall also find and report the cause which,

<sup>1</sup> Compare paragraph 965, *ante*; these statutes created the unlimited retired list.

<sup>2</sup> The act of June 17, 1878, authorizes service as an officer of volunteers during the War of the Rebellion, or as an enlisted man in the armies of the United States, regular or volunteer, to be credited in the computation of service for longevity pay or retirement. See paragraph 983, *post*.

<sup>3</sup> This provision does not authorize a retiring board to entertain a charge of a military offense, as such, or to try an officer. Dig. J. A. G., 464, par. 1. The investigation of a retiring board is not affected by any limitation as to time, as is that of a court-martial. Such a board may therefore inquire into the matter of a disability, however long since it may have originated. *Ibid.*, 664, par. 2.

in its judgment, has produced his incapacity, and whether such cause is an incident of service.<sup>1</sup>

**973.** The proceedings and decision of the board shall be transmitted to the Secretary of War, and shall be laid by him before the President for his approval or disapproval and orders in the case.

Revision by the President.  
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.  
Sec. 1250, R. S.

**974.** When a retiring board finds that an officer is incapacitated for active service, and that his incapacity is the result of an incident of service, and such decision is approved by the President, said officer shall be retired from active service and placed on the list of retired officers.

Disability incident to service.  
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.  
Sec. 1251, R. S.

**975.** When the board finds that an officer is incapacitated for active service, and that his incapacity is not the result of any incident of service, and its decision is approved by the President,<sup>3</sup> the officer shall be retired from active service, or wholly retired from the service, as the President may determine. The names of officers wholly retired from the service shall be omitted from the Army Register.

Disability not incident to service.  
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.  
Sec. 1252, R. S.

**976.** Except in cases where an officer may be retired by the President upon his own application, or by reason of his having served forty-five years, or of his being sixty-two years old, no officer shall be retired<sup>3</sup> from active service, nor shall an officer, in any case, be wholly retired from the service, without a full and fair hearing before an Army retiring board, if, upon due summons, he demands it.<sup>4</sup>

Officers entitled to a hearing.  
Aug. 3, 1861, c. 42, s. 17, v. 12, p. 290.  
Sec. 1253, R. S.

**977.** Officers hereafter retired from active service shall be retired upon the actual rank held by them at the date of retirement.

To be retired on actual rank.  
June 10, 1872, v. 17, p. 378; Mar. 3, 1875, v. 18, p. 512.  
Sec. 1254, R. S.

**978.** That all officers of the Army who have been heretofore retired by reason of disability arising from wounds received in action shall be considered as retired upon the

Officers retired on actual rank.  
Sec. 2, Mar. 3, 1875, v. 18, p. 512; 1868, c. 38, s. 2, v. 15, p. 58.

<sup>1</sup> Held that the cause of incapacity intended in this section was a physical cause; that moral obliquity was not had in view; and that the matter of the financial integrity of the officer was beyond the jurisdiction of the board. Dig. J. A. G., 667, par. 15. The incapacity may result from habitual drunkenness. Ibid., 665, par. 5.

<sup>2</sup> The finding of a retiring board, approved by the President, is conclusive as to the facts. The board finds the facts and the President approves or disapproves the finding, but the law does not empower him to modify the finding or to substitute a different one. There is here a judicial power, vested in the two, and not in the President acting singly, and when the power has once been fully exercised it is exhausted as to the case. Dig. J. A. G., 668, par. 18; U. S. v. Burchard, 125 U. S., 179; U. S. v. Miller, 19 C. Cls. R., 338.

<sup>3</sup> To be "wholly retired," in accordance with the terms of this section, is to be put out of the Army and out of office. An officer wholly retired becomes a civilian, and can be readmitted to the service only by a new appointment. Dig. J. A. G., 666, par. 9; Miller v. U. S., 19 C. Cls. R., 338.

<sup>4</sup> The provision of this section that an officer shall not be "wholly retired from the service without a full and fair hearing before an Army retiring board if, upon due summons, he demands it," may be said to entitle him to appear before the board (with counsel, if desired), and to introduce testimony of his own, to cross-examine the witnesses examined by the board, including the medical members of the board who may have taken part in the medical examination, and have stated, or reported to the board the result of the same. If the officer does not elect to appear before the board when summoned, he waives the right to a hearing, and can not properly take exception to a conclusion arrived at in his absence. Dig. J. A. G., 665, par. 7. When the President approves and acts upon the report of a retiring board he thereby determines that the officer has had a full and fair hearing. Miller v. U. S., 19 C. Cls. R., 338. But see 16 Att. Gen. Opin., 20.

actual rank held by them, whether in the regular or volunteer service, at the time when such wound was received, and shall be borne on the retired list and receive pay hereafter accordingly; and this section shall be taken and construed to include those now borne on the retired list placed upon it on account of wounds received in action: *Provided*, That no part of the foregoing act shall apply to those officers who had been in service as commissioned officers twenty-five years at the date of their retirement; nor to those retired officers who had lost an arm or leg, or has an arm or leg permanently disabled by reason of resection, on account of wounds, or both eyes by reason of wounds received in battle; and every such officer now borne on the retired list shall be continued thereon notwithstanding the provisions of section two chapter thirty-eight act of March thirty, eighteen hundred and sixty-eight; *and be it also provided*, that no retired officer shall be affected by this act, who has been retired or may hereafter be retired on the rank held by him at the time of his retirement. *Sec. 2, act of March 3, 1815 (18 Stat. L., 512).*

Status of retired officers.

Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289; July 17, 1862,

**979.** Officers retired from active service shall be withdrawn from command and from the line of promotion.

Vacancies caused by retirement.

Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289.

Sec. 1257, R. S.

**980.** When any officer in the line of promotion is retired from active service, the next officer in rank shall be promoted to his place, according to the established rules of the service; and the same rule of promotion shall be applied, successively, to the vacancies consequent upon such retirement.

The limited retired list.

Aug. 3, 1861, c. 42, s. 16, v. 12, p. 289; July 15, 1870, c. 294, s. 5, v. 16, p. 317; Feb. 16, 1891, v. 26, p. 703. Sec. 1258, R. S.

**981.** The whole number of officers of the Army on the retired list shall not at any time exceed three hundred and fifty, and any less number to be allowed thereon may be fixed by the President in his discretion.<sup>1</sup>

Transfers from limited to unlimited list.

V. 20, p. 150, amended. Feb. 16, 1891, v. 26, p. 763.

**982.** That when officers who have been placed on the limited retired list as established by section seven, chapter two hundred and sixty-three, page one hundred and fifty, volume twenty, United States Statutes at Large, shall have attained the age of sixty-four years they shall be transferred from said limited retired list to the unlimited list of officers retired by operation of law because of having attained said age of sixty-four years. And the limited retired list shall hereafter consist of three hundred and fifty instead of four hundred, as now fixed by law: *Provided*, That officers who have been placed on the retired list by special authority of Congress shall not form part of

<sup>1</sup> Section 7 of the act of June 17, 1878 (20 Stat. L., 144), fixed the strength of the limited retired list at 400. The number on the limited retired list was fixed at 350 by the act of February 16, 1891 (26 Stat. L., 703).

the limited retired list established by this act. *Act of February 16, 1891 (26 Stat. L., 763).*

**983.** That on and after the passage of this act, all officers of the Army of the United States who have served as officers in the volunteer forces during the war of the rebellion, or as enlisted men in the armies of the United States, regular or volunteer, shall be, and are hereby, credited with the full time they may have served as such officers and as such enlisted men in computing their service for longevity pay and retirement. And the retired list shall hereafter be limited to four hundred in lieu of the number now fixed by law. *Sec. 7, act of June 17, 1878 (20 Stat. L., 150).*

Service for longevity and retirement.  
Sec. 7, June 17, 1878, v. 20, p. 150.

Retired list.

#### PAY OF RETIRED OFFICERS.

**984.** Officers retired from active service shall receive seventy-five per centum of the pay of the rank upon which they were retired.<sup>1</sup>

Pay of retired officers  
Sec. 1274, R. S.

#### MISCELLANEOUS PROVISIONS.

**985.** Officers retired from active service shall be entitled to wear the uniform of the rank on which they may be retired. They shall continue to be borne on the Army Register, and shall be subject to the rules and articles of war, and to trial by general court-martial for any breach thereof.<sup>2</sup>

Rights and liabilities.  
Aug. 3, 1861, c. 42, s. 18, v. 12, p. 290.  
Sec. 1256, R. S.

**986.** Retired officers of the Army may be assigned to duty at the Soldiers' Home, upon a selection by the commissioners of that institution, approved by the Secretary of War; and a retired officer shall not be assignable to any other duty: *Provided*, That they receive from the Government only the pay and emoluments allowed by law to retired officers.<sup>3</sup>

Assignment to duty at Soldiers' Home.  
Jan. 21, 1870, c. 9, s. 2, v. 16, p. 62;  
Apr. 6, 1870, Res. 32, v. 16, p. 372;  
Feb. 27, 1877, c. 69, v. 19, p. 243.  
Sec. 1259, R. S.

<sup>1</sup> The pay of retired officers is a matter within the control of Congress, and so is their rank. *Wood v. U. S., 15 C. Cls. R., 151, and 107 U. S., 414.*

<sup>2</sup> A retired officer is subject to trial by court-martial, and a court-martial has jurisdiction of offenses committed after the officer was retired. *Runkle v. U. S., 19 C. Cls. R., 396; Dig. J. A. G., 666, par. 11.*

<sup>3</sup> A retired Army officer is not prohibited by law from holding office in an Executive Department, nor from receiving the salary thereof in addition to his retired pay. *Collins v. U. S., 15 C. Cls. R., 22; Meigs v. U. S., 19 C. Ct., 497.* A retired officer may be employed by the War Department. *Yates v. U. S., 25 C. Cls. R., 296.* Retired officers, as such, do not hold public office. They are in fact pensioners. The position and pay given them constitute a form of pension. They exercise no functions and receive no emoluments of office, but are pensioned for past faithful services or disabilities contracted in the line of duty. Their condition and public office have no characteristics in common. *Dig. J. A. G., 668, par. 19.* See in this connection the act of July 31, 1894 (28 Stat. L., 205), which permits retired officers to hold office to which they have been elected by the people or appointed by the President with the advice and consent of the Senate. See also section 7 of the act of June 3, 1896 (29 Stat. L., 235), which contains the requirement "that section 2 of the act of July 31, 1894 (28 Stat. L., 205), shall not be so construed so to prevent the employment of any retired officer of the Army or Navy to do work under the direction of the Chief of Engineers of the United States Army in connection with the improvement of rivers and harbors of the United States, or the payment by the proper officer of the Treasury of any amounts agreed upon as compensation for such employment." This provision operates to exempt from the terms of the act of July 31, 1894 (sec. 1763, Rev. Stat.), all retired officers of the Army or Navy who may be employed by the Engineer Department upon works of river and harbor improvement.

Ineligible for civil office in any Territory.

Mar. 3, 1883, v. 22, p. 567.

Sec. 1860, R. S.

**987.** No person belonging to the Army or Navy shall be elected to or hold any civil office or appointment in any Territory, except officers of the Army on the retired list.

#### MISCELLANEOUS PROVISIONS RESPECTING COMMISSIONED OFFICERS.

Par.

988. Duties on which officers are not to be employed.

989. Accepting or holding civil office.

990. Army officers to be detailed as Indian agents.

991. Supernumerary officers may, on their own request, be discharged with pay, etc.

Par.

992. Enlisted men not to be used as servants.

993. Effects of deceased officers.

994. Officers charged with effects to account for same.

Duties upon which officers of the Army are not to be employed.

Feb. 27, 1877, v. 19, p. 243.

Sec. 1224, R. S.

**988.** No officer of the Army shall be employed on civil works or internal improvements, or be allowed to engage in the service of any incorporated company, or be employed as acting paymaster or disbursing-agent of the Indian Department, if such extra employment requires that he shall be separated from his company, regiment, or corps, or if it shall otherwise interfere with the performance of the military duties proper. *Act of February 27, 1877 (19 Stat. L., 243).*

Accepting or holding civil office.

July 15, 1870, c. 294, s. 18, v. 16, p. 319.

Sec. 1222, R. S.

**989.** No officer of the Army on the active list shall hold any civil office, whether by election or appointment, and every such officer who accepts or exercises the functions of a civil office shall thereby cease to be an officer of the Army, and his commission shall be thereby vacated.

Army officers to be detailed as Indian agents.

July 13, 1892, v. 27, p. 120.

**990.** That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian agents at all agencies where vacancies from any cause may hereafter occur, who, while acting as such agents, shall be under the orders and direction of the Secretary of the Interior, except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian.<sup>1</sup> *Act of July 13, 1892 (27 Stat. L., 120).*

Supernumerary officers may, on their own request, be discharged with certain pay.

June 30, 1882, v. 22, p. 118.

**991.** That any officer who is supernumerary to the permanent organization of the Army as provided by law may, at his own request, be honorably discharged from the Army, and shall thereupon receive one year's pay for each five years of his service, but no officer shall receive more

<sup>1</sup> See, for other provisions of law respecting the detail of officers as Indian agents, the chapters entitled THE INDIANS; INDIAN AGENTS; THE INDIAN COUNTRY.

than three year's pay in all. *Act of June 30, 1882 (22 Stat. L., 118).*

992. No officer shall use an enlisted man as a servant in any case whatever.

Enlisted men not to be used as servants.  
July 15, 1870, c. 294, s. 14, v. 16, p. 319.  
Sec. 1232, R. S.

#### DECEASED OFFICERS.

993. In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.<sup>1</sup> *One hundred and twenty-fifth Article of War.*

Effects of deceased officers.  
125 Art. War.

#### <sup>1</sup> DECEASED OFFICERS.

The death of an officer, with place, cause, day, and hour, will be reported without delay by his immediate commander direct to the Adjutant-General of the Army. A duplicate of this report will be forwarded to department headquarters. When the death occurs away from the officer's station, in hospital or on leave, the medical officer, if one be present, or any officer having cognizance of the fact, will make the report. (Par. 81, A. R., 1895.)

Inventories of the effects of deceased officers, as required by the One hundred and twenty-fifth Article of War, will be transmitted to the Adjutant-General of the Army. If legal representatives take possession of the effects, the fact will be stated in the inventory. (Par. 82, *ibid.*)

If there be no legal representatives present to receive the effects, a list of them will be sent to the nearest relative of the deceased. At the end of two months, if not called for, they will be sold at auction and accounted for as in the case of deceased soldiers, except that swords, watches, trinkets, and similar articles will be labeled with the name, rank, regiment, and date of death of the owner, and sent through the Adjutant-General to the Auditor for the War Department for the benefit of the heirs. (Par. 83, *ibid.*)

Where an officer dies who is responsible for public property or funds, their disposition is provided for by the following provisions of Army Regulations: "On the death of an officer in charge of public property or funds, his commanding officer will appoint a board of survey, which will inventory the same, and make the customary returns therefor, stating accurately amounts and condition. These the commanding officer will forward to the chiefs of the bureaus to which the property or funds pertain, and he will designate an officer to take charge of such property or funds until orders in the case are received from the proper authority." (Par. 84, *ibid.*)

#### FUNERAL EXPENSES.

The disposition of the remains of deceased officers and the payment of funeral expenses are provided for in the following regulation: "The remains of officers killed in action, or who die when on duty in the field or at military posts, or when traveling under orders, will be decently inclosed in coffins, and unless claimed by relatives or friends, will be transported by the Quartermaster's Department to the nearest military post or national cemetery for burial. The expense of transporting the remains is payable from the appropriation for Army transportation; other expenses of burial are limited to \$75. If buried at the place of death, the fact will be reported to the Adjutant-General of the Army." (Par. 85, *ibid.*)

The annual acts of appropriation since that of June 12, 1858 (11 Stat. L., 333), have contained a provision for the expenses of interment "of officers killed in action or who die when on duty in the field or at military posts, or when on the frontiers, or when traveling under orders." (Act of February 12, 1895, 128 Stat. L., 659.)

There is no authority of law for the payment of mileage on account of the transportation of the remains of a deceased officer of the Army. Such payment would be illegal, and could not properly be allowed by the accounting officers. Under section 2, act of July 24, 1894 (19 Stat. L., 100), mileage ceased to accrue at the point where, and the time when, by reason of death, an officer ceases to be an officer of the Army. There is nothing in section 1 of the act of September 19, 1890 (26 Stat. L., 456), which is in conflict with this view. (3 Compt. Dec., 209.)

*Held*, that the regulation allowance for the expenses of the interment of an officer, as fixed by paragraph 85, Army Regulations, 1895, was not payable in the case of an officer who, at the time of his death, was on sick leave, this being not one of the cases specified in the Army appropriation acts in which such allowance is authorized to be paid. *Dig. J. A. G.*, 578, par. 68. Similarly *held* in the case of an officer who died at the Hot Springs, Ark., when not on duty but on leave of absence. *Ibid.* *Held, further*, that, under the provisions on the subject of the Army appropriation act of February 27, 1893, such expenses could not be allowed for the interment of an officer dying at a military post unless he was on duty there at the time of his death,



Officers charged  
with effects to ac-  
count for same.  
127 Art. War.

**994.** Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered. *One hundred and twenty-seventh Article of War.*

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and therefore could not be legally allowed in a case of an officer who deceased at a post where he was staying while on sick leave of absence from his station in another military department. *Ibid.*, par. 69.

*Held*, that the fact that an officer had been interred at the post where he died did not preclude the Secretary of War from having authorized his permanent interment elsewhere, provided the entire expenses of burial did not exceed the maximum amount of \$75 allowed for such purposes by paragraph 85, Army Regulations of 1895. (*Ibid.*, par. 69.)

Paymasters, in making prepayments of salary to officers of the Army, are liable for any portion unearned by the officer on account of death, or otherwise; also for any final indebtedness of said officer to the Government to the extent of said prepayment. (3 Compt. Dec., 10.)

Balances due from the United States to deceased persons are payable at the Treasury, and not by disbursing officers. (Second Compt., sec. 676; Scott Dig., 260.)

## CHAPTER XXVII.

### BREVETS—MEDALS OF HONOR—CERTIFICATES OF MERIT—FOREIGN DECORATIONS.

Par.	Par.
995. Brevet commissions.	1003. To be addressed by title of actual rank.
996. Dates of brevet commissions.	1004. Officers may wear uniform of highest volunteer rank.
997. Brevets authorized for gallantry in Indian campaigns.	1005. Foreign decorations not to be worn.
998. To date from passage of this act.	1006. Decorations, etc.; how tendered.
999. Brevet rank to be strictly honorary.	1007. Medals of honor.
1000. Assignments to duty, etc.; when made.	1008. Certificate of merit.
1001. Effect of assignment.	1009. Army corps badges.
1002. Uniform of actual rank to be worn.	1010. Military society badges.
	1011. Badge of Regular Army and Navy Union.

#### BREVETS.

**995.** The President, by and with the advice and consent of the Senate, may, in time of war, confer commissions by brevet upon commissioned officers of the Army, for distinguished conduct and public service in presence of the enemy.

Brevet commissions.  
Sec. 1209, R. S.  
July 6, 1812, v. 2, p. 785; Apr. 16, 1818, v. 3, p. 427; Mar. 1, 1869, v. 15, p. 281.

**996.** Brevet commissions shall bear date from the particular action or service for which the officers were brevetted.

Date of brevet commission.  
Mar. 1, 1869, c. 52, s. 2, v. 15, p. 281.

**997.** That the President of the United States be, and he is hereby, authorized and empowered, at his discretion, to nominate, and by and with the advice and consent of the Senate, to appoint to brevet rank all officers of the United States Army, now on the active or retired list, who by their department commander, and with the concurrence of the commanding general of the Army, have been or may be recommended for gallant service in action against hostile Indians since January first, eighteen hundred and sixty-seven. *Sec. 1, act of February 27, 1890 (26 Stat. L., p. 13).*

Sec. 1210, R. S.  
Brevets authorized for gallantry, Indian campaigns.  
Feb. 27, 1890, v. 26, p. 13.

To date from passage of this act.

Sec. 2, *ibid.*

Date of heroic service.

**998.** That such brevet commissions as may be issued under the provisions of this act shall bear date only from the passage of this act: *Provided, however,* that the date of the particular heroic act for which the officer is promoted shall appear in his commission. *Sec. 2, ibid.*

Brevet rank to be strictly honorary.

Sec. 3, *ibid.*

**999.** That brevet rank shall be considered strictly honorary, and shall confer no privilege of precedence or command not already provided for in the statutes which embody the rules and articles governing the Army of the United States. *Sec. 3, ibid.*

Assignment to duty, etc.; when made.

Mar. 3, 1883, v. 22, p. 457.

**1000.** That officers of the Army shall only be assigned to duty or command according to their brevet rank when actually engaged in hostilities. *Act of March 3, 1883 (22 Stat. L., 457).*

Effect of assignment.

Apr. 16, 1818, c. 64, s. 1, v. 3, p. 427; Mar. 3, 1869, c. 124, s. 7, v. 15, p. 318.

Sec. 1211, R. S.

**1001.** Officers may be assigned to duty or command according to their brevet rank by special assignment of the President; and brevet rank shall not entitle an officer to precedence or command except when so assigned.

Uniform of actual rank to be worn.

July 15, 1870, c. 294, s. 16, v. 16, p. 319. Sec. 1212, R. S.

**1002.** No officer shall be entitled, on account of having been brevetted, to wear, while on duty, any uniform other than that of his actual rank.

To be addressed in orders by title of actual rank.

*Ibid.*

**1003.** No officer shall be addressed in orders or official communications by any title other than that of his actual rank.

#### UNIFORM OF HIGHEST VOLUNTEER RANK.

Officers may wear uniform of highest volunteer rank.

July 28, 1866, c. 299, s. 34, v. 14, p. 337.

Sec. 1226, R. S.

**1004.** All officers who have served during the rebellion as volunteers in the Army of the United States, and have been honorably mustered out of the volunteer service, shall be entitled to bear the official title, and, upon occasions of ceremony, to wear the uniform of the highest grade they have held, by brevet or other commissions, in the volunteer service. The highest volunteer rank which has been held by officers of the Regular Army shall be entered, with their names respectively, upon the Army Register. But these privileges shall not entitle any officer to command, pay, or emoluments.

#### FOREIGN DECORATIONS.

Foreign decorations not to be worn.

Sec. 2, Jan. 31, 1881, v. 21, p. 80.

**1005.** That no decoration, or other thing, the acceptance of which is authorized by this act, and no decoration heretofore accepted, or which may hereafter be accepted, by consent of Congress, by any officer of the United States, from any foreign government, shall be publicly shown or exposed upon the person of the officer so receiving the same. *Sec. 2, act of January 31, 1881 (21 Stat. L., 80).*

1006. That hereafter any present, decoration, or other thing, which shall be conferred or presented by any foreign government to any officer of the United States, civil, naval, or military, shall be tendered through the Department of State, and not to the individual in person, but such present, decoration, or other thing shall not be delivered by the Department of State unless so authorized by act of Congress. *Sec. 3, ibid.*

Decorations,  
etc., how ten-  
dered.  
*Sec. 3, ibid.*

#### MEDALS OF HONOR.

1007. That the President cause to be struck, from the dies recently prepared at the United States Mint for that purpose, "medals of honor" additional to those authorized by the act (resolution) of July 12, 1862, and present the same to such officers, noncommissioned officers, and privates as have most distinguished, or may hereafter most distinguish themselves in action.<sup>1</sup> *Sec. 6, act of March 3, 1863.* That the Secretary of War be, and he is hereby, authorized to issue to any person to whom a medal of honor has been awarded, or may hereafter be awarded, under the provisions of the joint resolution approved July twelfth, eighteen hundred and sixty-two, and the act approved March third, eighteen hundred and sixty-three, a rosette or knot to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette, or knot, and ribbon to be each of a pattern to be prescribed and established by the President of the United States, and any appropriation that may hereafter be available for the contingent expenses of the War Department is hereby made available for the purposes of this act: *Provided*, That whenever a ribbon issued under the provisions of this act shall have been lost, destroyed, or rendered unfit for use, without fault or neglect on the part of the person to whom it is issued, the Secretary of War shall cause a new ribbon to be issued to such person without charge therefor. *Joint Resolution No. 51, May 2, 1896 (29 Stat. L., 473).*

Medals of  
honor.  
S. 6, Mar. 3,  
1863, v. 12, p. 751.  
J. R. 51, May 2,  
1896, v. 29, p. 473.

Rosette, or  
knot, and rib-  
bon.

New ribbon.

#### CERTIFICATES OF MERIT.

1008. That when any enlisted man of the Army shall have distinguished himself in the service the President may, at the recommendation of the commanding officer of the regiment or the chief of the corps to which such enlisted man belongs, grant him a certificate of merit. *Act of March 29, 1892 (27 Stat. L., 12).* A certificate of merit

Certificate of  
merit.

Mar. 3, 1847, c.  
61, s. 17, v. 9, p.  
186; Aug. 4, 1854,  
c. 247, s. 3, v. 10,  
p. 575; Feb. 9,  
1891, v. 26, p. 737;  
Mar. 29, 1892, v.  
27, p. 12.

Sec. 1216, R. S.  
Certificate of  
merit.

Sec. 1285, R. S.

<sup>1</sup>This provision was not embraced in the Revised Statutes. Medals of honor will be awarded by the President to officers and men who most distinguish themselves in action. (Par. 177, A. R., 1895.)

granted to an enlisted man for distinguished service shall entitle him, from the date of such service, to additional pay at the rate of two dollars per month while he is in the military service, although such service may not be continuous.<sup>1</sup> *Sec. 2, act of February 9, 1891 (26 Stat. L., 737).*

#### CORPS BADGES AND INSIGNIA OF SOCIETIES.

Army corps  
badges.

July 25, 1868,  
Public Res. No.  
73, v. 15, p. 261.  
*Sec. 1227, R. S.*

**1009.** All persons who have served as officers, non-commissioned officers, privates, or other enlisted men, in the Regular Army, volunteer or militia forces of the United States, during the war of the rebellion, and have been honorably discharged from the service, or still remain in the same, shall be entitled to wear, on occasions of ceremony, the distinctive Army badge ordered for or adopted by the Army corps and division, respectively, in which they served.

Military soci-  
ety badges may  
be worn by Army  
and Navy.

J. R. No. 50,  
Sept. 25, 1890, v.  
26, p. 681.

**1010.** That the distinctive badges adopted by military societies of men who served in the armies and navies of the United States in the war of the Revolution, the war of eighteen hundred and twelve, the Mexican war, and the war of the rebellion respectively, may be worn upon all occasions of ceremony by officers and enlisted men of the Army and Navy of the United States, who are members of said organizations in their own right. *Joint resolution No. 50, of September 25, 1890 (26 Stat. L., 681).*

Badge of Regu-  
lar Army and  
Navy Union  
may be worn.

J. R. No. 26,  
May 11, 1894, v.  
28, p. 583.

**1011.** That the distinctive badge adopted by the Regular Army and Navy Union of the United States may be worn, in their own right, upon all public occasions of ceremony by officers and enlisted men of the Army and Navy of the United States who are members of said organization. *Joint resolution No. 26, of May 11, 1894 (28 Stat. L., 583).*

<sup>1</sup> A certificate of merit granted to an enlisted man for distinguished service entitles him, from the date of such service, to additional pay at the rate of \$2 per month while in the Army, although such service may not be continuous. (Par. 1370 A. R., 1881.)

If the soldier be discharged before the certificate is issued, it will be retained in the Adjutant-General's Office until called for, when proof of the identity of the applicant will be required. Should he die before receiving his certificate, it will be deposited in the office of the Auditor for the War Department for the benefit of his heirs. (Par. 181, A. R., 1895.)

Section 1285 of the Revised Statutes as amended by section 2 of the act of February 9, 1891 (26 Stat. L., 737), is retroactive and relates to the date upon which the distinguished service was rendered. (*McNamara v. U. S.*, 28 C. Cls. R., 416.)

## CHAPTER XXVIII.

### ENLISTED MEN.

#### ENLISTMENT AND RE-ENLISTMENT.

Par.	Par.
1012. General qualifications.	1019. Premium for recruit.
1013. Limit of age.	1020. Fraudulent enlistment.
1014. Enlistment of minors.	1021. Reenlistment.
1015. Persons not to be enlisted.	1022. Additional pay.
1016. The same; citizenship.	1023. Period extended to three months.
1017. The same; deserters, minors, insane or intoxicated persons.	1024. Certain discharged soldiers may reenlist.
1018. Term of enlistment; qualifications for reenlistment.	1025. No pay to be retained.

**1012.** Recruits enlisting in the Army must be effective and able-bodied men, and between the ages of sixteen and thirty years, at the time of their enlistment.<sup>1</sup> This limitation as to age shall not apply to soldiers re-enlisting.

General qualifications.

Mar. 16, 1802, c. 9, s. 11, v. 2, p. 134; Mar. 3, 1815, c. 79, s. 7, v. 3, p. 224; July 5, 1838, c. 25, s. 2, v. 12, p. 339; July 17, 1862, c. 200, s. 21, v. 12, p. 597, Feb. 27, 1893, v. 27, p. 486. Sec. 1116, R. S.

**1013.** Hereafter, in time of peace, no recruit shall be enlisted in the Army for the first time who is over thirty years of age. *Act of February 27, 1893 (27 Stat. L., 486).*

Limit of age. Feb. 27, 1893, v. 27, p. 486.

<sup>1</sup> Enlistment is a contract; but it is one of those contracts which changes the status, and where that is changed no breach of contract destroys the new status or relieves from the obligations which its existence imposes. \* \* \* By enlistment the citizen becomes a soldier. His relations to the State and the public are changed. He acquires a new status, with correlative rights and duties, and although he may violate his contract obligations, his status as a soldier is unchanged. He can not of his own volition throw off the garments he has once put on, nor can he, the State not objecting, renounce his relations and destroy his status on the plea that, if he had disclosed truthfully the facts, the other party, the State, would not have entered into the new relations with him, or permitted him to change his status. (U. S. v. Grimley, 137 U. S., 147.)

Our law not defining enlistment, nor designating what proceeding, or proceedings, shall or may constitute an enlistment, it may be said, in general, that any act or acts which indicate an undertaking, on the part of a person legally competent to do so, to render military service to the United States for the term required by existing law, and an acceptance of such service on the part of the Government, may ordinarily be regarded as legal evidence of a contract of enlistment between the parties, and as equivalent to a formal agreement where no such agreement has been had. The forty-seventh article of war practically makes the receipt of pay by a party as a soldier evidence of an enlistment on his part, estopping him from denying his military capacity when sought to be made amenable as a deserter. The continued rendering of service, which is accepted, may constitute an enlistment. But enlistments in our Army are now almost invariably evidenced by a formal writing and engagement under oath. (Dig. J. A. G., 384, par. 1.) See also *In re McDonald*, 1 Lowell, 100.

Any male citizen of the United States, or person who has legally declared his intention to become a citizen, if above the age of twenty-one and under the age of thirty years, able-bodied, free from disease, of good character and temperate habits, may be enlisted under the restrictions contained in this article. In regard to age or citizenship this regulation shall not apply to soldiers who have served honestly and faithfully a previous enlistment in the Army. (Par. 823, A. R., 1895.)

Enlistment of minors.

May 15, 1872, c. 162, s. 1, v. 17, p. 117.

Sec. 1117, R. S.

**1014.** No person under the age of twenty-one years shall be enlisted or mustered into the military service of the United States without the written consent of his parents or guardians: *Provided*, That such minor has such parents or guardians entitled to his custody and control.

Persons not to be enlisted.

Mar. 2, 1833, c. 68, s. 6, v. 4, p. 647; July 4, 1864, c. 237, s. 5, v. 13, p. 380; Mar. 3, 1865, c. 79, s. 18, v. 13, p. 490; Feb. 27, 1877, c. 69, v. 19, p. 242.

The same; citizenship.

**1015.** No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.

Sec. 1118, R. S.

**1016.** In time of peace no person (except an Indian) who is not a citizen of the United States, or who has not made legal declaration of his intention to become a citizen of the United States, or who can not speak, read, and write the English language, or who is over thirty years of age, shall be enlisted for the first enlistment in the Army. *Sec. 2, act of August 1, 1894 (28 Stat. L., 215).*

Enlistment of minors prohibited.

3 Art. War.

**1017.** Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.<sup>1</sup> *Third Article of War.*

Term of enlistment.

Qualifications for reenlistment.

Sec. 2, Aug. 1, 1894, v. 28, p. 216.

**1018.** That hereafter all enlistments in the Army shall be for the term of three years, and no soldier shall be again enlisted in the Army whose service during his last preceding term of enlistment has not been honest and faithful.<sup>2</sup>

<sup>1</sup> Sections 1116, 1117, and 1118, Revised Statutes, providing that deserters, convicted felons, insane, or intoxicated persons, and certain minors shall not be enlisted are regarded as directory only, and not as making necessarily void such enlistments, but as rendering them voidable merely, at the option of the Government. In cases of such enlistments, except of course where the party, by reason of mental derangement or drunkenness was without the legal capacity to contract, the Government may elect to hold the soldier to service, subject to any application for discharge which may be addressed by himself or his parent, etc., either to the Secretary of War or to a United States court. *Ibid.*, 385, par. 3. See also, *U. S. v. Grimley*, 137 U. S., 147, cited in note to paragraph 1012, *supra*.

The enlistment contract of a minor is void when the recruit is under 16, with or without the consent of the parent. In *re Lawler*, 40 F. R., 233. It is not void, but voidable only, as to minors between 16 and 21. *U. S. v. Morrissey*, 137 U. S., 187. It is not voidable at the instance of the minor. *Ibid.* It is voidable at the instance of the parent or guardian. *Com. v. Blake*, 8 Phil., 523; *Turner v. Wright*, 5 *ibid.*, 296; *Menges v. Camac*, 1 Serg. and R., 87; *Henderson v. Wright*, *ibid.*, 299; *Seavey v. Seymour*, 3 Cliff., 439; In *re Cosenow*, 37 F. R., 668; In *re Hearn*, 32 *ibid.*, 141; In *re Davison*, 21 *ibid.*, 618; *U. S. v. Wagner*, 24 *ibid.*, 135; In *re Dohrendorf*, 40 F. R., 148; In *re Spencer*, *ibid.*, 149; In *re Lawler*, *ibid.*, 233; In *re Wall*, 8 *ibid.*, 85.

A minor's contract of enlistment is voidable, not void, and is not so voidable at the instance of the minor. If, after enlistment, he commits an offense, is actually arrested, and in course of trial before the contract is duly avoided, he may be tried and punished. (In *re Wall*, 8 Fed. Rep., 85; see also *Barrett v. Hopkins*, 7 *ibid.*, 312.)

<sup>2</sup> The contract of enlistment is an entirety. If service for any portion of the time

1019. A premium of two dollars shall be paid to any citizen, non-commissioned officer, or soldier for each accepted recruit he may bring to a recruiting rendezvous.

Premium for recruit.  
June 21, 1862,  
Res. 37, v. 12, p. 620.

1020. That fraudulent enlistment, and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable by court-martial, under the Sixty-second Article of War. *Sec. 3, act of July 27, 1892.* (27 Stat. L., 278).

*Sec. 1120, R. S.*  
Fraudulent enlistment.  
Sec. 3, July 27, 1892, v. 27, p. 278.

#### RE-ENLISTMENT.

1021 All enlisted men, mentioned in section twelve hundred and eighty [paragraph 638, ante] who, having been honorably discharged, have re-enlisted or shall re-enlist within three months thereafter, shall, after five years service, including their first enlistment, be paid at the rate allowed in said section to those serving in the fifth year of their first enlistment.<sup>1</sup>

Re enlistment.  
Sec. 3, Aug. 1, 1894, v. 28, p. 216.  
Sec. 1282, R. S.

1022. Every soldier who, having been honorably discharged, re-enlists within three months thereafter, shall be further entitled, after five years service, including his first enlistment, to receive, for the period of five years next thereafter, two dollars per month in addition to the ordinary pay of his grade; and for each successive period of five years of service, so long as he shall remain continuously in the Army, a further sum of one dollar per month. The past continuous service, of soldiers now in the Army, shall be taken into account, and shall entitle such soldier to additional pay according to this rule; but services rendered prior to August fourth, eighteen hundred and fifty-four, shall, in no case, be accounted as more than one enlistment.

Additional pay.  
Sec. 3, Aug. 1, 1894, v. 28, p. 216.  
Sec. 1284, R. S.

is criminally omitted the pay and allowances for faithful services are not earned. (*Lander v. U. S.*, 92 U. S., 77.)

As to what constitutes faithful service within the meaning of this statute, see note to paragraph 1021, post. This section operates to repeal section 1119, Revised Statutes, and section 2 of the act of June 16, 1890 (26 Stat. L., 187), which fixed the term of enlistment in the Army at five years.

<sup>1</sup> The additional pay given to soldiers by this section does not depend upon mere length of service, but upon two other conditions—an honorable discharge and a voluntary reenlistment. *Webb v. U. S.*, 23 C. Cls. R., 58. It is intended, primarily, to be an inducement to the prompt reenlistment of an honorably discharged soldier, and it can be earned in no other way. *Ibid.*

The act of June 16, 1890 (26 Stat. L., 157), contained the provision "that the Secretary of War shall determine what misconduct shall constitute a failure to render honest and faithful service within the meaning of this act. But no soldier who has deserted at any time during the term of an enlistment shall be deemed to have served such term honestly and faithfully." Under the authority conferred by this statute the Secretary of War has decided that in the following cases there has been a failure to render honest and faithful service:

(1) Desertion.

(2) When the soldier is in confinement under a general court-martial sentence expressly imposing imprisonment until or beyond the expiration of his term; when discharged under sentence of general court-martial; when discharged by order from the War Department specifying forfeiture, or because of imprisonment by the civil authority.

(3) When the soldier is discharged for minority concealed at enlistment, or for other cause involving fraud in enlistment, or for disability caused by his misconduct.

(4) Upon the approved finding of a board of officers called under paragraph 148, that the soldier has not served honestly and faithfully to the date of discharge.

The cause of forfeiture will be stated on the muster and pay rolls and on the final statements of the soldier.



Period ex-  
tended to three  
months.  
Sec. 3, Aug. 1,  
1894, v. 28, p. 216.

Continuous  
service.

Certain dis-  
charged soldiers  
may re-enlist.  
Sec. 2, Aug. 1,  
1894, v. 28, p. 216.

No pay to be re-  
tained.  
Mar. 16, 1896, v.  
29, p. 60.

Retirement of  
enlisted men after  
thirty years' service.  
Feb. 14, 1885, v.  
23, p. 305; Sep. 30,  
1890, v. 26, p. 504.

1023. That the period within which soldiers may re-enlist with the benefits conferred by sections twelve hundred and eighty-two and twelve hundred and eighty-four of the Revised Statutes, be, and the same is hereby, extended to three months; and hereafter every enlisted man in the Army, excepting general service clerks and general service messengers, shall be entitled to all the benefits conferred by sections twelve hundred and eighty-one and twelve hundred and eighty-two of the Revised Statutes: *Provided*, That to entitle them to the additional pay authorized by section twelve hundred and eighty-one, for men serving in the third, fourth, and fifth years, the service must have been continuous within the meaning of this section. *Sec. 3, act of August 1, 1894 (28 Stat. L., 216).*

1024. That any soldier discharged since January twenty-seventh, eighteen hundred and ninety-three, who has been prevented from re-enlisting by the operations of the Act of Congress approved February twenty-seventh, eighteen hundred and ninety-three, and who may hereafter enlist within three months from the date of the approval of this Act, shall be considered to have re-enlisted and shall be entitled to receive while serving subsequent to such enlistment the same pay, service pay, and allowances as if he had re-enlisted within thirty days from his latest discharge.<sup>1</sup> *Sec. 2, act of August 1, 1894 (28 Stat. L., 216).*

1025. That hereafter no pay shall be retained, but this provision shall not apply to deductions authorized on account of the Soldiers' Home.<sup>2</sup> *Act of March 16, 1896 (29 Stat. L., 60).*

THE RETIREMENT OF ENLISTED MEN.

Par.	Par.
1026. Retirement of enlisted men.	1027. Allowance for subsistence and clothing.

1026. That when an enlisted man has served as such thirty years in the United States Army or Marine Corps, either as private or non-commissioned officer, or both, he shall by application to the President be placed on the retired list hereby created, with the rank held by him at the date of retirement, and he shall receive thereafter

<sup>1</sup> This section repeals and replaces the requirement of the act of February 27, 1893 (27 Stat. L., 486), "that hereafter, in time of peace no recruit shall be enlisted in the Army for the first time who is over 30 years of age, and no private shall be reenlisted who has served ten years or more, or who is over 35 years of age, except such as have already served as enlisted men for twenty years or upward."  
<sup>2</sup> The act of February 12, 1895 (28 Stat. L., 655), expressly repealed so much of the act of June 16, 1890 (26 Stat. L., 157), as authorized the retention of \$4 per month from the pay of enlisted men in the first year of their first enlistment. This statute repeals, in terms, all prior acts authorizing the retention of pay from enlisted men. The deduction of 12½ cents per month from the pay of all enlisted men, for the support of the Soldiers' Home, is excepted from the operation of this section.

seventy-five per centum of the pay and allowances of the rank upon which he was retired: *Provided*, That if said enlisted man had war service with the Army in the field, or in the Navy or Marine Corps in active service, either as volunteer or regular, during the war of the rebellion, such war service shall be computed as double time in computing the thirty years necessary to entitle him to be retired.<sup>1</sup> *Act of February 14, 1885 (23 Stat. L., 305), as amended by act of September 30, 1890 (26 Stat. L., 504).*

War service, etc., to be computed as double time.

1027. That hereafter a monthly allowance of nine dollars and fifty cents be granted in lieu of the allowance for subsistence and clothing. *Act of March 16, 1896 (29 Stat. L., 62).*

Allowance for subsistence and clothing. Mar. 16, 1896, v. 29, p. 62.

#### FURLOUGHS TO ENLISTED MEN.

Par.	Par.
1028. Furloughs.	1030. Transfer from military to naval service.
1029. Furlough at expiration of three years' service.	

1028. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent

Furloughs. 11 Art. War.

<sup>1</sup>The act of February 14, 1885 (23 Stat. L., 305), which created the retired list for enlisted men, was amended by the act of September 30, 1890 (26 Stat. L., 504), by the addition of the proviso permitting war service during the war of the rebellion to be computed as double time in computing the thirty years' service necessary to entitle him to be retired.

An enlisted man on the retired list is subject to trial by court-martial, and to dishonorable discharge by sentence, if such be adjudged. But the existing law, in entitling him to be retired if he complies with its conditions, evidently contemplates that he shall remain a pensioner on the bounty of the Government during the remainder of his life, if not forfeiting his claim by serious misconduct. So, held that retired enlisted men could not legally be discharged by Executive order under the Fourth Article of War, which contemplates soldiers on the active list only. (Dig. J. A. G., 669, par. 24.)

*Held*, in the absence of any legislation to the contrary, that retired enlisted men, like retired officers, might legally be employed in any Department of the Government, as clerks, messengers, watchmen, etc., and receive pay for such employment, while at the same time retaining their positions on the retired list and receiving retired pay. (Dig. J. A. G., 670, par. 25.)

The act of February 14, 1885 (23 Stat. L., 305), entitles a retired enlisted man to three-fourths of his service ration. He is not entitled to commutation for things which, in active service, he enjoys only in common with others, such as medicine, medical services, fuel, and quarters. (*McKenna v. U. S.*, 23 C. Cls. R., 308.)

The authorized pay and allowances of retired enlisted men will be paid them monthly by the Pay Department. Their pay will be three-fourths of the monthly pay allowed them by law in the grade held when retired, including reenlisted and continuous-service pay then received. No deduction will be made except the monthly tax of 12½ cents for the support of the Soldiers' Home. They are not entitled to commutation for fuel or quarters. (Par. 138, A. R., 1895.) Commutation for subsistence and clothing is fixed by the act of March 16, 1896 (paragraph 1027, *supra*) at nine dollars and fifty cents per month for all retired enlisted men.

It has been held by the Secretary of War that the term "war service," as used in the act of September 30, 1890, shall include service rendered as a commissioned officer, and that, for the purposes of this statute, the war began on April 15, 1861, and ended on April 2, 1866, as respects all theatres of operation, except the State of Texas, and as to that State that the war ended on April 20, 1866. (Circular No. 2, 11 H. Q. A., March 10, 1891.)

Upon the retirement of an enlisted man from active service he is entitled to transportation in kind to the place of his enlistment or to his home. Section 1290, Revised Statutes, does not apply to enlisted men transferred to the retired list, in that they are not discharged. (3 Dig. Compt. Dec., 227; *U. S. v. Tyler*, 105 U. S., 244.)

troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.<sup>1</sup> *Eleventh Article of War.*

Furlough at expiration of three years' service.

Sec. 2, June 16, 1890, v. 26, p. 157.

**1029.** That at the end of three years from the date of his enlistment every soldier whose antecedent service has been faithful shall be entitled to receive a furlough for three months, and that in time of peace he shall at the end of such furlough be entitled to receive his discharge upon his own application: *Provided further*, That soldiers discharged under the provisions of this section shall not be entitled to the allowances provided in section twelve hundred and ninety of the Revised Statutes.<sup>2</sup> *Sec. 2, act of June 16, 1890 (26 Stat. L., 157).*

<sup>1</sup>Furloughs in the prescribed form for periods of twenty days may be granted to enlisted men by commanding officers of posts, or by regimental commanders, if the companies to which they belong are under their control. A furlough will not be granted to a soldier about to be discharged. (Par. 106, A. R., 1895.)

Department commanders may grant furloughs to enlisted men, sergeants of the post noncommissioned staff excepted, for two months, and the Commanding General of the Army for four months, or they may extend to such periods furloughs already granted. For a longer period than four months the authority of the Secretary of War is necessary. Permission to delay may be granted to enlisted men traveling under orders as authorized for furloughs. The conditions under which furloughs to soldiers on reenlistment are authorized will be announced from time to time in orders. (Par. 107, *ibid.*)

Furloughs to sergeants of the post noncommissioned staff, or to enlisted men acting as such, may be granted as follows: By a post commander for seven days in case of emergency only; by a department commander for one month. Application for furlough for a longer period will be forwarded to the Adjutant-General of the Army for the decision of the Secretary of War. (Par. 108, *ibid.*)

Furloughs will not be granted by commanding officers permitting soldiers to go beyond the limits of the next higher command. To enable them to pass such limits the sanction of higher authority must be obtained and indorsed on the furloughs. The approval of the Secretary of War must be obtained to allow an enlisted man on furlough to leave the United States. The limits prescribed will be stated in the furlough, and if exceeded, it may be revoked and the soldier arrested. A company commander in forwarding an application for furlough will state previous absences on furlough, and the authority therefor. (Par. 109, *ibid.*)

On the application of a soldier on furlough, made at the nearest military station and showing clearly the urgency of his case, a department commander may order transportation and subsistence to be furnished to enable him to rejoin his proper station, and the company commander will charge the cost thereof against the soldier's pay on the next muster and pay roll, in accordance with paragraphs 1082 and 1277. The date of the application will be entered on the furlough. (Par. 110, *ibid.*)

A soldier who has returned from furlough to the station from which furloughed, his company having in his absence changed station, is entitled to transportation at the expense of the Government to the new station of his company. (Par. 111, *ibid.*)

Soldiers on furlough will not take with them their arms or accouterments, and no payments will be made to them without authority from the Secretary of War. (Par. 112, *ibid.*)

<sup>2</sup>See in this connection section 2 of the act of August 1, 1894 (paragraph 1016, *supra*), which reduces the length of the term of enlistment, in time of peace, to three years. This section will, therefore, cease to be operative as to furloughs on August 1, 1897, and as to discharges at expiration of furlough on November 1, 1897.

## TRANSFER OF ENLISTED MEN.

**1030.** Any person enlisted in the military service of the United States may, on application to the Navy Department, approved by the President, be transferred to the Navy or Marine Corps, to serve therein the residue of his term of enlistment, subject to the laws and regulations for the government of the Navy. But such transfer shall not release him from any indebtedness to the Government, nor, without the consent of the President, from any penalty incurred for a breach of military law.<sup>1</sup>

Transfer from military to naval service.

July 1, 1864, c. 201, s. 1, v. 13, p. 342.

Sec. 1421, R. S.

## DISCHARGE OF ENLISTED MEN.

Par.	Par.
1031. Discharge of enlisted men.	1034 Discharge certificates in true name.
1032. Discharge by purchase.	
1033. Loss of certificate of discharge.	1035. Honorable discharge to be returned to officers and enlisted men.

**1031.** No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field officer of the regiment to which he belongs, or by the commanding officer, when no field officer is present; and no discharge shall be given to any enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.<sup>2</sup>

*Fourth Article of War.*

Discharge of enlisted men.  
4 Art. War.

<sup>1</sup> TRANSFER OF ENLISTED MEN.

Transfers of enlisted men will be made for cogent reasons only. They will be effected as follows:

(1) From one company to another of the same regiment, not involving change of station, by the colonel. In cases involving change, then by the colonel with the consent of the department commander if change of station is within department limits.

(2) From one regiment to another, and between companies of the same regiment serving in different military departments, by the Commanding General of the Army.

(3) In all other cases, by the Secretary of War. (Par. 113, A. R., 1895.)

## DETACHED SOLDIERS.

Enlisted men detached from their companies will be provided with descriptive lists showing the pay due them, the condition of their clothing allowances, and all information necessary to the settlement of their accounts with the Government should they be discharged. When it can be avoided, the descriptive list will not be intrusted to the soldier, but to an officer or noncommissioned officer, under whose charge he may be serving, or it may be forwarded by mail. The immediate commanding officer will note upon the descriptive lists the date and result of the last vaccination of each soldier. (Par. 105, *ibid.*)

<sup>2</sup>An enlisted man will not be discharged before the expiration of his term except:

(1) By order of the President or Secretary of War.

(2) By sentence of a general court-martial.

(3) On certificate of disability, by direction of the commander of a territorial department or army in the field; but when the disability of a soldier is caused by disease contracted before enlistment, or by his own misconduct or bad habits, discharge will be ordered only by the Secretary of War.

(4) In compliance with an order of one of the United States courts, or a justice or a judge thereof, on a writ of habeas corpus. (Par. 140, A. R., 1895.)

The act of March 16, 1896 (29 Stat. L., 63), contains the requirement "that no enlisted man discharged by order of the Secretary of War for disability caused by his own misconduct shall be entitled to the travel allowances provided for in section 1290 of the Revised Statutes." See Par. 653, *ante*.

When an enlisted man is discharged, his company commander will furnish him

## DISCHARGE BY PURCHASE.

Discharge by purchase.  
Sec. 4, June 16, 1890, v. 26, p. 157

**1032.** That in time of peace the President may, in his discretion and under such rules and upon such conditions as he shall prescribe, permit any enlisted man to purchase his discharge from the Army. The purchase money to be paid under this section shall be paid to a paymaster of the Army and be deposited to the credit of one or more of the current appropriations for the support of the Army, to be indicated by the Secretary of War, and be available for the payment of expenses incurred during the fiscal year in which the discharge is made.<sup>1</sup> *Sec. 4, act of June 16, 1890 (26 Stat. L., 157).*

with final statements in duplicate or a full statement in writing of the reasons why such final statements are not furnished. Final statements will not be furnished a soldier who has forfeited all pay and allowances and has no deposits nor detained pay due him. When the discharge is made on certificate of disability, the ascertained disability as recited in the certificate must be given in the final statements as the reason or cause for discharge. (Par. 141, *ibid.*)

When an enlisted man is discharged by expiration of service his discharge will take effect on the last day thereof; i. e., if enlisted on the second day of the month his term will expire on the first day of the same month in the last year of his term of enlistment. (Par. 142, *ibid.*)

For provisions of regulations respecting the discharge of enlisted men see paragraphs 140-157, Regulations of 1895.

Discharge certificates will not be made in duplicate. Upon satisfactory proof of the loss of a discharge or of its destruction without the fault of the party entitled to it, the War Department may issue to such party a certificate of service, showing date of enlistment in and discharge from the Army and character given on discharge certificate. Discharge certificates must not be forwarded to the War Department in correspondence unless called for. (Par. 143, A. R., 1895.)

Blank forms for discharge and final statements will be furnished by the Adjutant-General of the Army, and will be retained in the personal custody of company commanders; those for discharge will be of three classes: For honorable and for dishonorable discharge, and for discharge without honor. They will be used as follows:

- (1) The parchment discharge blank, for honorable discharge only, and the word "honorable" will be interlined in the old blanks when used.
- (2) The blank for dishonorable discharge, for such discharge alone.
- (3) The blank for discharge without honor, when a soldier is discharged:
  - (a) Without trial, on account of fraudulent enlistment.
  - (b) Without trial, on account of having become disqualified for service, physically or in character, through his own fault.
  - (c) On account of imprisonment under sentence of a civil court.
  - (d) On account of being at the expiration of his term of enlistment in confinement under the sentence of a general court-martial which does not provide for dishonorable discharge.
  - (e) With forfeiture of retained pay on the approved finding of a board that he has not served honestly and faithfully.
  - (f) When discharge without honor is specially ordered by the Secretary of War for any other reason. (Par. 151, *ibid.*)

An enlisted man remains in service until receipt of his discharge, or until such action is taken as will render him legally chargeable with notice thereof, notwithstanding the expiration of his term of enlistment during his absence on a furlough granted at his own request. (2 *Compt. Dec.*, 94.)

## DISHONORABLE DISCHARGE.

A dishonorable discharge from the service is a complete expulsion from the Army and covers all unexpired enlistments. (Par. 152, A. R., 1895.)

<sup>1</sup> Under section 4 of the act of June 16, 1890, chapter 426, the President may, in his discretion, permit a soldier to purchase his discharge, even if his service has not been faithful. This section does not, as do section 1 (relating to pay) and section 2 (relating to discharge and furlough), prescribe as a condition to receive its benefits that the antecedent service shall have been "faithful." (*Dig. Opin. J. A. Gen.*, p. 362, par. 32.)

The act of June 16, 1890, section 4, leaves it to the President, "in his discretion," to determine the amount to be paid for the discharge, the time of payment, etc., and, indeed, whether the purchase shall be permitted at all. But it specifically declares that the money when paid "shall be paid to a paymaster of the Army;" and, in view of this express provision, *held* that payments could not legally be made to post, regimental, company, or other commanders. The paymaster, a bonded official, is appointed to receive payment in the first instance and thereupon make the deposit directed in the act. (*Ibid.*, par. 33.)

*Held* that there was no legal authority for the refunding, by the military authorities, of money paid to purchase a discharge under the act of June 16, 1890. This

## CERTIFICATES OF DISCHARGE.

**1033.** Whenever satisfactory proof is furnished to the War Department that any non-commissioned officer or private soldier who served in the Army of the United States in the late war against the rebellion has lost his certificate of discharge, or the same has been destroyed without his privity or procurement, the Secretary of War shall be authorized to furnish, on request, to such non-commissioned officer or private a duplicate of such certificate of discharge, to be indelibly marked, so that it may be known

Loss of certificate of discharge.  
Mar. 3. 1873, c. 248, s. 1, v. 17, p. 582.  
Sec. 224, R. S.

clearly appears from the terms of the act, which provides that the money, when paid, "shall be deposited in the Treasury" to the credit of some current appropriation, to be designated by the Secretary of War, to be "available for the payment of expenses incurred during the fiscal year in which the discharge is made." The act moreover authorizes the President to permit such purchases "under such rules and upon such conditions as he shall prescribe," and nothing is found in the rules actually prescribed (in General Orders 81, 108 of 1890, 48 of 1891, 32 of 1892, or 17 of 1893) which contemplates or refers to the refunding of such purchase money. (*Ibid.* p. 363, par. 35.)

In time of peace a soldier serving in the second year or first six months of the third year of his first enlistment may apply to the Adjutant-General of the Army through military channels for the privilege of purchasing his discharge, but such application will not be entertained unless based on satisfactory reasons fully set forth by the applicant and verified by the officer forwarding the application, nor unless accompanied by a statement of the soldier's immediate commanding officer showing the condition of his accounts. If such application be granted, the purchase price will be entered on the final statements as an item due the United States. A soldier once discharged by purchase will not be granted that favor a second time. A soldier serving in a second or any other enlistment, but not receiving continuous service or reenlisted pay, is not debarred from discharge by purchase. The price of purchase in the first month of the second year will be \$120, and will be \$5 less in each succeeding month of the period during which purchase may be authorized. (Par. 144, A. R., 1895.)

Enlisted men who have served meritoriously twelve years or more, continuously or otherwise, will be classified as veteran soldiers. If it be for their material benefit, discharge may be granted them by the Secretary of War by way of favor as veterans. A soldier once discharged as a veteran will not be discharged again by way of favor. (Par. 145, *ibid.*)

Soldiers discharged as provided in paragraphs 144 and 145 will not receive travel allowances. (Par. 146, *ibid.*)

A soldier who has obtained his discharge by purchase under the provisions of section 4, act of June 16, 1890, is not entitled to recover the money paid for said discharge in pursuance of law. (2 Compt. Dec., 546.) The accounting officers have no authority to review the action of the War Department refusing to discharge the soldier for disability and requiring him to purchase his discharge as a condition precedent to his release from service. (2 Compt. Dec., 546.)

## DISCHARGE FOR DISABILITY.

When an enlisted man is permanently unfitted for military service because of wounds or disease, he should, if practicable, be discharged on certificate of disability before the expiration of the term of service in which the disability was incurred. Blank forms will be furnished by the Adjutant-General of the Army, and the directions thereon will be strictly complied with. (Par. 154, A. R., 1895.)

When physical disability does not appear to be permanent, was incurred in line of duty, and benefit may be expected from a change of climate, a report of the case will be forwarded for the action of the Commanding General of the Army. The soldier will not be transferred to another company. In cases likely to be benefited by treatment in the Army and Navy General Hospital at Hot Springs, Ark., the application required by the regulations for admission thereto will be made. A record of cases transferred under the foregoing provisions, with a report of results, will be forwarded to the Surgeon-General at the end of each calendar year. (Par. 155, *ibid.*)

When an application for discharge is approved, the post or regimental commander will furnish to the surgeon by whom the certificate was given, or to the senior surgeon of the command to which the soldier was attached at the time of his discharge, a letter setting forth the full name and rank of the soldier, the company and regiment to which he belonged, the date of discharge, and the cause thereof as stated in the certificate. The surgeon, having made a true copy of the letter for the completion of his own records, will forward the original to the Surgeon-General direct. (Par. 156, *ibid.*)

When there is a probable case for pension, special care will be taken to state in the certificate the degree of disability, to describe particularly the disability, wound, or disease, the extent to which it deprives the soldier of the use of any limb or faculty, or affects his health, strength, activity, constitution, or capacity to labor. (Par. 157, *ibid.*)

as a duplicate; but such certificate shall not be accepted as a voucher for the payment of any claim against the United States for pay, bounty, or other allowance, or as evidence in any other case.<sup>1</sup>

Discharge certificates, etc., in true name.

Apr. 14, 1890, v. 26, p. 55.

**1034.** That the Secretary of War and the Secretary of the Navy be, and they are hereby, authorized and required to issue certificates of discharge or orders of acceptance of resignation, upon application and proof of identity, in the true name of such persons as enlisted or served under assumed names, while minors or otherwise, in the Army and Navy during the war of the rebellion, and were honorably discharged therefrom. Applications for said certificates of discharge or amended orders of resignation may be made by or on behalf of persons entitled to them; but no such certificate or order shall be issued where a name was assumed to cover a crime or to avoid its consequence.<sup>1</sup>

*Act of April 14, 1890 (26 Stat. L., 55).*

Honorable discharge to be returned to officers and enlisted men.

May 4, 1870, Res. No. 42, v. 16, p. 374.

Sec. 282, R. S.

**1035.** In all cases where it has become necessary for any officer or enlisted man of the Army to file his evidence of honorable discharge from the military service of the United States to secure the settlement of his accounts, the accounting officer with whom it has been filed shall, upon application by said officer or enlisted man, deliver to him such evidence of honorable discharge; but his accounts shall first be duly settled, and the fact, date, and amount of such settlement shall be clearly written across the face of such evidence of honorable discharge, and attested by the signature of the accounting officer before it is delivered.

#### DESERTION.

Par.	Par.
1036. Desertion; penalty.	1042. Deserters not to be enlisted in military service.
1037. Making good time lost.	1043. Deserters not to be enlisted in naval service.
1038. Rights of citizenship forfeited by desertion.	1044. Deposits forfeited.
1039. Certain soldiers and sailors not to incur forfeitures of the last section.	1045. Punishment for advising or persuading desertion.
1040. Avoiding the draft.	1046. Enticing desertions from military and naval service.
1041. Deserters not entitled to bounty land.	

<sup>1</sup> Discharge certificates will not be made in duplicate. Upon satisfactory proof of the loss of a discharge, or of its destruction without the fault of the party entitled to it, the War Department may issue to such party a certificate of service, showing date of enlistment in and discharge from the Army and character given on discharge certificate. Discharge certificates must not be forwarded to the War Department in correspondence unless called for. (Par. 143, A. R., 1895.)

The discharge certificates authorized to be issued under the provisions of these statutes is not to be confounded with the certificate denominated a "deserter's release," the issue of which is authorized in certain cases by G. O. 55, A. G. O., 1890 (26 Stat. L., 54). See note to paragraph 1068, post.

Par.

1047. Enlisting in another regiment.

1048. Who may arrest deserters.

1049. Arrest of deserters by civil officers.

1050. Reward for apprehension limited to ten dollars.

Par.

1051. Absence without leave.

1052-1065. Removal of the charge of desertion.

1066. Statute of limitations in desertion.

**1036.** Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.<sup>1</sup> *Forty-seventh Article of War.*

Desertion; penalty.  
47 Art. War.

<sup>1</sup> Desertion is an unauthorized absents of himself from the military service by an officer or soldier with the intention of not returning. In other words, it is the violation of military discipline familiarly known as absence without leave (whether consisting in an original absents without authority or in an overstay of a defined leave of absents), accompanied by an animus remanendi, or non revertendi, this animus constituting the gist of the offense. In order to establish the commission of the specific offense, both these elements—the fact of the unauthorized voluntary withdrawal and the intent permanently to abandon the service—must be proved. The intent may be inferred not indeed from the fact of absents alone, but from the circumstances attending this fact, and here the duration of the absents is especially material. Thus the circumstance that the absents has been exceptionally protracted and quite unexplained will in general furnish a presumption of the existence of the necessary intent. An unauthorized absents, however, of a few hours, terminated by a forcible apprehension, may, under certain situations, be sufficient evidence of such intent, and thus proof of a desertion; while an absents for a considerable interval, unattended by circumstances indicating a purpose to separate permanently from the service, or to dissolve the pending engagement of the soldier, may be proof simply of the minor included offense. In order to determine whether or not the officer or soldier absented himself with the intent not to return i. e., whether his offense was desertion or absents without leave, all the circumstances connected with his leaving, absents, and return (whether compulsory or voluntary) must be considered together. Each case must be governed by its own peculiar facts, and no general rule on the subject can be laid down. (Dig. J. A. Gen., 337, par. 1.)

Where an officer left his post on a three days' leave of absents and did not return to duty or report himself at the proper time, but absconded to Canada with a large amount of Government funds, *held*, on his being arrested some months subsequently in the United States, that he was clearly chargeable with the offense of desertion. So where an officer having been guilty of sundry embezzlements and frauds, and become involved in debt, and being on the point of being placed in arrest, obtained, by means of wholly false representations, a brief leave of absents from his post for the expressed purpose of visiting a certain place named, and was subsequently apprehended at a place quite other and much more distant than that designated, and while rapidly traveling en route for a still more remote locality; *held*, in the absents of any evidence to rebut the presumption thus raised, that he was properly chargeable with having absented himself with the animus of a deserter. (Ibid., 338, par. 2.)

No man will be reported a deserter until after the expiration of ten days (should he remain away that length of time), unless the company commander has conclusive evidence of the absentes's intention not to return; but commanding officers will take steps to apprehend soldiers absent without leave as soon as that fact is reported. Should the soldier not return, or not be apprehended, within the time named, his desertion will date from the commencement of the unauthorized absents. An absents without leave of less than one day will not be noted upon the muster and pay rolls. (Par. 133, A. R., 1895.)

When a deserter surrenders or is delivered at a military post, the post commander will cause immediate inquiry to be made in regard to dates of enlistment and desertion, and if these indicate that trial is barred by law, and the deserter claims to have been within the limits of the United States during two years of his absents in desertion and there is no attainable evidence in disproof thereof, will require him to file an affidavit asserting his claim, will immediately set him at liberty with instructions to apply by letter to the Adjutant-General of the Army for a "deserter's release," and will then report his action to the Adjutant-General of the Army, transmitting with the report the affidavit above mentioned. (Par. 120, *ibid.*)

An enlisted man apprehended or surrendering as a deserter, and whose trial for desertion is not barred by the statute of limitations, will be examined by a medical officer at the post where he is received, and a report of this examination will be forwarded to department headquarters. If, on account of disease, age, or other permanent disability, the man is found unfit for service, the report, with the department commander's recommendation thereon, will be forwarded to the Adjutant-General of



STATUTORY PENALTIES AND FORFEITURES.<sup>1</sup>

Making good  
time lost.  
48 Art. War.

**1037.** Every soldier who deserts the service of the United States shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.<sup>2</sup> *Forty-eighth Article of War.*

Rights of citi-  
zenship forfeited  
by desertion, etc.  
Mar. 3, 1865, c.  
79, s. 21, v. 13, p.  
490.  
Sec. 1996, R. S.

**1038.** All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the eleventh day of March, eighteen hundred and sixty-five, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the

the Army. If the examination shows that the man is fit for service, the department commander will bring him to trial, or restore him to duty without trial, as the interests of the Government may dictate. (Par. 121, *ibid.*)

Deserters will be brought to trial with the least practicable delay. While awaiting trial they will receive no pay, and will be required to wear the clothes worn at the time of arrest, unless it should be imperative to issue other clothing, when, as far as practicable, only deserters' or other unserviceable clothing will be issued. (Par. 120, *ibid.*)

A deserter will not be restored to duty without trial, except by authority competent to order his trial. Such restoration does not remove the charge of desertion, nor relieve the soldier from any of the forfeitures attached to that offense. He must make good the time lost by desertion, refund the reward and expenses paid for apprehension and delivery, and forfeit pay while absent. (Par. 132, *ibid.*)

The forfeiture of pay and allowances prescribed for deserters by paragraphs 126, 130, and 132 of the Army Regulations can be imposed, in any case, only upon a satisfactory ascertainment of the fact of desertion. The same may indeed legally be enforced in the absence of an investigation by a military court, as, for instance, upon the restoration to duty without trial, by the order of competent authority, under paragraph 128 of the Army Regulations, of a deserter as such. But in general, in this case equally as in that of the statutory liability, the forfeiture can safely be applied only upon the trial and conviction by court-martial of the alleged deserter. The conviction must, of course, be duly approved; if it be disapproved, the soldier can not legally be subjected to the forfeiture, since he can not be treated as a deserter in law. Nor can he be subjected to the forfeiture if he is acquitted, though the finding be disapproved by the reviewing authority. A removal, in orders of the War Department, of a charge of desertion entered by mistake upon the rolls against a soldier, operates to relieve him of any and all stoppages which have been charged against his pay account for forfeitures authorized by the Army Regulations in cases of deserters. (Dig. J. A. Gen., 342, par. 9.)

A deserter can not legally be subjected to any forfeiture other than those prescribed by statute or army regulation. He incurs, for example, no forfeiture of his own personal property. So, where certain property left by a deserter in his quarters was sold by the authorities of the post with intent to devote the proceeds to the post fund, *held* that such proceeds, upon the subsequent arrest of the deserter, should be paid over to him. So a soldier, by reason of having deserted, does not forfeit bounty money which has been paid him upon enlistment or subsequently or any other money found in his possession upon his arrest. And such money can not legally be withheld from him to be appropriated to a regimental or post fund or any other purpose, but being his own personal property, unaffected by his offense, must be left in his possession. (*Ibid.*, 343, par. 10.)

<sup>2</sup>A deserter will make good the time lost by desertion, unless discharged by competent authority. He will be considered again in service upon his return to military control; but if a deserter enlists while in desertion, his services under such unlawful enlistment will not be counted as making good any of the time lost by desertion. (Par. 131, A. R., 1895.)

## DISPOSITION OF EFFECTS OF DESERTERS.

The clothing abandoned by a deserter will be turned over to the quartermaster with a certificate from the company or detachment commander showing its condition and the name of the deserter to whom it belonged. All other personal effects of a deserter will be disposed of as in the case of unclaimed effects of deceased soldiers. (Par. 130, *ibid.*)

United States, or of exercising any rights of citizens thereof.<sup>1</sup>

**1039.** No soldier or sailor, however, who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Certain soldiers and sailors not to incur the forfeitures of the last section.  
July 19, 1867, c. 28, v. 15, p. 14.  
Sec. 1997, R. S.

**1040.** Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.

Avoiding the draft.  
Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490.  
Sec. 1998, R. S.

**1041.** No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it appears by the muster-rolls of his regiment or corps that he deserted or was dishonorably discharged from service.

Deserters not entitled to bounty land.  
Sept. 28, 1850, c. 85, s. 1, v. 9, p. 520;  
Mar. 3, 1855, c. 207, s. 1, v. 10, p. 701.  
Sec. 2438, R. S.

**1042.** No minor under the age of sixteen years, no insane or intoxicated person, no deserter from the military service of the United States, and no person who has been convicted of a felony shall be enlisted or mustered into the military service.

Deserters not to be enlisted.  
Mar. 2, 1833, v. 4, p. 647; July 4, 1864, v. 13, p. 380;  
Mar. 3, 1865, v. 13, p. 490; Feb. 27, 1877, v. 19, p. 242.  
Sec. 1118, R. S.

**1043.** No minor under the age of fourteen years, no insane or intoxicated person, and no deserter from the naval or military service of the United States shall be enlisted in the naval service.

Persons not to be enlisted.  
Mar. 3, 1865, v. 13, p. 490; May 12, 1879, v. 21, p. 3; Feb. 23, 1881, v. 21, p. 331.

**1044.** Any enlisted man of the Army may deposit his savings, in sums not less than five dollars, with any Army paymaster, who shall furnish him a deposit-book, in which shall be entered the name of the paymaster and of the soldier, and the amount, date, and place of such deposit. The money so deposited shall be accounted for in the same manner as other public funds, and shall pass to the credit

Sec. 1420, R. S.  
Deposits forfeited.  
May 15, 1872, c. 161, s. 1, v. 17, p. 117.  
Sec. 1305, R. S.

<sup>1</sup>The forfeiture of the rights of citizenship, and the incapacity to hold office under the United States, imposed upon deserters by the act of March 3, 1865 (secs. 1996, 1998, R. S.), can be incurred only upon and as incident to a conviction of desertion by a general court-martial, duly approved by competent authority. These disabilities, though attaching to every such conviction, may be removed by an Executive pardon of the offender. (Dig. J. A. Gen., 342, par. 8.)

Such is believed to have been the uniform course of ruling in the civil courts. See *State v. Symonds*, 57 Maine, 148; *Holt v. Holt*, 59 *ibid.*, 464; *Severance v. Healy*, 50 N. Hamp., 448; *Gotcheus v. Matthewson*, 61 N. Y., 420; (and 5 Lansing, 214; 58 Barb., 152); *Huber v. Reilly*, 53 Pa. St., 112; *McCafferty v. Guyer*, 59 *ibid.*, 110; *Kurtz v. Moffitt*, 115 U. S., 501.

of the appropriation for the pay of the Army, and shall not be subject to forfeiture by sentence of court-martial, but shall be forfeited by desertion, and shall not be permitted to be paid until final payment on discharge, or to the heirs or representatives of a deceased soldier, and that such deposit be exempt from liability for such soldier's debts: *Provided*, That the Government shall be liable for the amount deposited to the person so depositing the same.

Punishment for  
advising or per-  
suading deser-  
tion.

51 Art. War.

**1045.** Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct. *Fifty-first Article of War.*

Enticing deser-  
tions from the  
military or naval  
service.

Mar. 3, 1863, c.  
75, s. 24, v. 12, p.  
735; July 1, 1864,  
c. 204, v. 13, p. 343;  
Feb. 27, 1877, v.  
19, p. 253.

Sec. 5455, R. S.

**1046** Every person who entices or procures, or attempts or endeavors to entice or procure, any soldier in the military service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such soldier in deserting or attempting to desert from such service, or who harbors, conceals, protects, or assists any such soldier who may have deserted from such service, knowing him to have deserted therefrom, or who refuses to give up and deliver such soldier on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than two years, and by a fine not exceeding five hundred dollars; and every person who entices or procures, or attempts or endeavors to entice or procure, any seaman or other person in the naval service of the United States, or who has been recruited for such service, to desert therefrom, or who aids any such seaman or other person in deserting or in attempting to desert from such service, or who harbors, conceals, protects, or assists any such seaman or other person who may have deserted from such service, knowing him to have deserted therefrom, or who refuses to give up and deliver such sailor or other person on the demand of any officer authorized to receive him, shall be punished by imprisonment not less than six months nor more than three years, and by a fine of not more than two thousand dollars, to be enforced in any court of the United States having jurisdiction.<sup>1</sup>

Enlisting in  
another regi-  
ment, etc.

50 Art. War.

**1047.** No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being reputed a deserter, and suffering accordingly. And in case any

<sup>1</sup> Where a civil official, having made an arrest of a deserter, concealed him from the military authorities, and afterwards permitted or connived at his escape, recommended that the Attorney-General be requested to instruct the proper United States district attorney to initiate proceedings under section 5455, Revised Statutes. (Dig. Opin. J. A. Gen., 345, par. 17.)

officer shall knowingly receive and entertain such noncommissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered. *Fiftieth Article of War.*

#### APPREHENSION OF DESERTERS.

1048. That United States marshals and their deputies, sheriffs and their deputies, constables, and police officers of towns and cities are hereby authorized to apprehend, arrest, and receive the surrender of any deserter from the Army for the purpose of delivering him to any person in the military service authorized to receive him.<sup>1</sup> *Sec. 3, act of June 16, 1890 (26 Stat. L., 157).*

Who may arrest deserters.  
Sec. 3, June 16,  
1890, v. 26, p. 157.

<sup>1</sup> A reward of \$10 will be paid to any civil officer having the proper authority for the apprehension and delivery to the proper military authorities at a military station (or at some convenient point as near thereto as can be agreed upon) of any deserter from the military service, except such as can claim exemption from trial under the statute of limitations. This reward will be paid by the Quartermaster's Department and will be in full satisfaction of all expenses for arresting, keeping, and delivering the deserter. The payment will be reported to the commander of the company or detachment to which the deserter belongs. (Par. 124, A. R., 1895.)

Rewards or expenses paid for apprehending a deserter, and the expenses incurred in transporting him from point of apprehension, delivery, or surrender to the station of his company or detachment, or to the place of his trial, including the cost of transportation of the guard, will be set against his pay upon conviction of desertion by a court-martial, or upon his restoration to duty without trial. A soldier convicted by a court-martial of absence without leave will be charged with the expense incurred in transporting him to his proper station. The transportation and subsistence of witnesses will not be charged against a deserter. (Par. 126, *ibid.*)

If a soldier be brought to trial under a charge of desertion and acquitted, or convicted of absence without leave only, or if the sentence be disapproved by proper authority, any amount paid as a reward for his arrest will not be stopped against his pay unless, in case of conviction of absence without leave, the sentence of the court shall so direct. (Par. 127, *ibid.*)

The reward of \$10, made payable by paragraph 124, Army Regulations, is not due merely on the apprehension of a deserter; he must also be delivered "to an officer of the army at the most convenient post or recruiting station." (a) The fact of the offer of a reward for the arrest of a deserter does not authorize a breach of the peace or commission of an illegal act in making the arrest. (b) (Dig. J. A. Gen., p. 343, par. 12.)

The amount of the reward—to cite from G. O. 325 of 1863—is in full "for all expenses incurred in apprehending, securing, and delivering a deserter." Disbursements made by a civilian, where no arrest is effected, are at his own risk, and can not legally be reimbursed by the military authorities. (*Ibid.*, p. 344, par. 13.)

The legal liability imposed upon the soldier by paragraph 126, Army Regulations, to have the amount of the reward stopped against his pay, is quite independent of the punishment which may be imposed upon him by sentence of court-martial on conviction of the desertion. Such stoppage is incident upon the conviction, and need not be directed in the sentence; courts-martial indeed have sometimes assumed to impose it, like an ordinary forfeiture of pay, but its insertion in the sentence adds nothing to its legal effect. (*Ibid.*, p. 344, par. 14.)

Where a soldier, charged with desertion, is acquitted, or where, if convicted, his conviction is disapproved by the competent reviewing authority, he can not legally be made liable for the amount of a reward paid or payable for his arrest as a deserter. since in such cases he is not a deserter in law. (*Ibid.*, p. 344, par. 15.)

Where a soldier for whose apprehension as a supposed deserter the reward of \$30 has been paid, is subsequently brought to trial upon a charge of desertion, and is

a The actual payment of the compensation in such cases is authorized by the annual army appropriation acts, which, in appropriating for the incidental expenses of the Quartermaster Department, include as an item—"for the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit." The acts of August 6, 1894, and February 12, 1895, contain the requirement that the sum paid shall not be greater than \$10.

b See, in this connection, *Clay v. U. S., Devereux*, 25, in which an officer, who, under orders of a superior, had, without previously procuring proper authority to enter and search from a civil magistrate, broken into a dwelling house for the purpose of securing the arrest of certain deserters, was held to have committed an unjustifiable trespass, and his claim to be reimbursed by the United States for the amount of a judgment recovered against him on account of his illegal act was disallowed by the Court of Claims.

Arrest, etc., of  
deserters by civil  
officers.

Sec. 2, Oct. 1,  
1890, v. 26, p. 648.

1049. That it shall be lawful for any civil officer having authority under the laws of the United States or of any State, Territory, or District, to arrest offenders, to summarily arrest a deserter from the military service of the United States and deliver him into the custody of the military authority of the General Government. *Sec. 2, act of October 1, 1890 (26 Stat. L., 648).*

found guilty not of desertion but only of the lesser and distinct offense of absence without leave, he clearly can not legally be held liable for the reward by a stoppage of the amount against his pay. In such a case, the instrumentality resorted to by the United States for determining the nature of his offense—the court martial—having pronounced that it was not desertion, the Government is bound by the result, and to visit upon him a penalty to which a deserter only can be subject, would be grossly arbitrary and wholly unauthorized. Moreover, such action would be directly at variance with the terms of paragraph 124 of the Army Regulations, which fixes such liability upon the soldier tried, in the event only of his conviction of desertion, (a) unless indeed the sentence of the court expressly forfeits the amount (b). (*Ibid.*, par. 16.)

#### PAYMENT OF REWARDS.

To entitle a person (under paragraph 124, Army Regulations of 1895) to the reward for the arrest of a deserter, the party arrested must be still a soldier. Though, at the time of the arrest, the period of his term of enlistment may have expired, or he may be under sentence of dishonorable discharge, yet if he has not been discharged in fact, the official duly making the arrest, etc., on account of a desertion committed before the end of his term, becomes entitled to the payment of the reward specified in the regulations. Similarly *held*, where the soldier, arrested when at large as a deserter, had been sentenced to confinement (without discharge), and had escaped therefrom. (*Ibid.*, 346, par. 26.)

The soldier arrested must be a deserter and legally liable as such. If he has been judicially determined to be not a deserter, as where he has been convicted of absence without leave only (see paragraph 126, Army Regulations); or, if in view of the limitation of the one hundred and third article, he has a legal defense to a prosecution for desertion (General Orders 22 of 1893)—the reward is not payable for his apprehension. (*Ibid.*, 347, par. 27. See, also, par. 127, A. R., 1895.)

Where the soldier when arrested had been absent but three days, and was still in uniform, and had not been reported or dropped as a deserter, and his company commander had not the "conclusive evidence" of his "intention not to return," referred to in paragraph 133, Army Regulations, *held* that there was not sufficient evidence that he was a deserter to justify the payment of the reward for his arrest and delivery. (*Ibid.*, par. 28.)

The arrest made must be a legal one. Thus *held* that the reward was not payable for an arrest made on the soil of Mexico, involving a violation of the territorial rights of that sovereignty. An act done in violation of law can not be the basis of a legal claim. (*Ibid.*, par. 29.)

Where the deserter was not arrested by, but surrendered himself to, the civil official, who in good faith took him into custody and securely held and duly delivered him—*advised* that there had been a substantial apprehension and that the reward was properly payable. [See Circular No. 1 (H. A.), 1886.] (*Ibid.*, par. 30.)

The delivery should be personal and manual on the part of the civil official. Where a soldier who had deserted was sentenced to a penitentiary as a horse thief, and at the end of his term of imprisonment a United States marshal caused information that he was a deserter to be conveyed to the commander of a neighboring military post, who thereupon had him arrested and brought to the post, *held* that the marshal was not entitled to claim the reward. (*Ibid.*, par. 31.)

So, where a civil official merely informed a captain of artillery that two soldiers serving in his battery were deserters from the battalion of engineers, *held* that, though such information was correct, the official was not entitled to the reward; and that the amount of the same, which had been erroneously paid him on the certificate of the captain, should be charged against the latter under paragraph 654, Army Regulations, 1895. (*Ibid.*, par. 32.)

The reward should be withheld where there is evidence of collusion between the alleged deserter and the civil official. *Advised* that a suspicion of such collusion was properly entertained in a case where the soldier, after an absence of but a few days, voluntarily surrendered himself, at or near the post of delivery, to a policeman, who turned him over, without expense or difficulty, to the military authorities who did not treat him as a deserter but caused him to be charged, tried, and convicted as an absentee without leave only. (*Ibid.*, p. 348, par. 33.)

An officer of the customs, empowered by law to make arrests of persons violating the revenue laws, but having no such general authority as is ordinarily possessed by peace officers "to arrest offenders" (according to the terms of the act of October 1, 1890, authorizing certain civil officials to arrest deserters)—*held* not entitled to be paid the regulation reward for the apprehension, etc., of a deserter from the Army. (*Ibid.*, par. 34.)

*Held* that a justice of the peace of Idaho was not, by the laws of that State, a peace officer or authorized to arrest offenders, and was therefore not within the terms of the act of October 1, 1890, or legally entitled to be paid the reward for the arrest, etc., of a deserter. Such justice may by his warrant authorize and thus

**1050.** For the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit, and no greater sum than ten dollars for each deserter shall be paid to any officer or citizen for such services and expenses.<sup>1</sup> *Act of March 16, 1896 (29 Stat. L., 65).*

Reward for apprehension limited to ten dollars.  
Mar. 16, 1896, v. 29, p. 65.

#### ABSENCE WITHOUT LEAVE.

**1051.** Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.<sup>2</sup> *Thirty-second Article of War.*

Absence without leave.  
32 Art. War.

cause arrests, but actual arrest pertains, under the laws of the State, to another class—sheriffs, constables, city marshals, and policemen. Similarly held in regard to an Indian who brought in a deserter to a military post in North Dakota, he having no authority under the laws of that State to make arrests. But held that a member of the Indian police, established under the regulations of the Indian Office, was a civil officer having authority to arrest offenders, and was entitled to the reward for the arrest of a deserter. (*Ibid.*, par. 35.)

Circular No. 11 (H. A.), 1883, declares that the reward shall not be paid where the deserter, at the time of arrest, "is serving in some other branch of the Army," etc. Thus held that the reward was not payable for the arrest of a deserter from the cavalry, who, subsequently to his desertion, had enlisted in an infantry regiment in which he was serving at the date of the arrest. (*Ibid.*, par. 36.)

Where a civil official, in good faith and in compliance with military instructions, made the arrest and delivery of a deserter, who, however, was of the class of deserters specified in General Orders 22 of 1893, viz, those who "would have the right to claim exemption from trial and punishment" under the present one hundred and third article of war—a fact not within the knowledge of the official, and which he could not have ascertained, but who therefore had no legal claim for the payment of the reward—held that the reasonable expenses of such official incurred in the arrest, etc., might well be allowed by the Secretary of War out of the appropriation for the contingent expenses of the Army. But the civil official takes the risk of the soldier being or not being an actual deserter. If he turns out to be not one, the official loses his time and disbursements, if any. Thus held that such official could have no claim to be reimbursed his expenses incurred in making, in good faith, the arrest of a supposed deserter who was in fact a dishonorably discharged soldier. (*Ibid.*, par. 37.)

A deserter is not chargeable, under paragraph 124, Army Regulations, with the expenses of transportation therein specified, if his conviction has been duly disapproved; such disapproval being tantamount to an acquittal. (*Ibid.*, p. 349, par. 38.)

The expense of the transportation of a convicted deserter, incurred in the course of the execution of his sentence, is not chargeable against the deserter under paragraph 126, Army Regulations of 1895, but must be borne by the United States. (*Ibid.*, par. 37.)

The act of August 6, 1894 (28 Stat. L., 239), having limited to \$10 the amount to be paid for the services and expenses of an officer or citizen in arresting a deserter from the Army, no greater amount can be paid after that date, notwithstanding an offer of a reward of \$60 in 1893, under then existing laws, and an arrest under such offer in November, 1894; nor can any expenses incurred prior to August 6, 1894, be allowed in addition to said sum of \$10. (1 Compt. Dec., 103.)

<sup>1</sup> The acts of August 6, 1894 (28 Stat. L., 239), and February 12, 1895 (*ibid.*, 659), contain the same provision.

<sup>2</sup> Absence without leave may consist in an act of omission as well as in one of commission. Where an officer detailed to command an escort of prisoners and to deliver them at a certain place, neglected, upon this service being performed, to return with reasonable diligence to his proper station, held that he was chargeable with absence without leave, it being the duty of an officer to return promptly from such a service without further orders (*a*). (Dig. J. A. Gen., p. 140, par. 1.)

Where an officer or soldier, on returning to his station after an unauthorized absence, is placed upon or allowed to perform full duty by his proper commander, such action, by the custom of the service, operates in general as a waiver of the charge of absence without leave, and may ordinarily be pleaded as a good defense in the event of a trial. (*Ibid.*, par. 2.)

An enlisted man who has absented himself from his post or company without authority is subjected to the forfeiture of pay and allowances prescribed by paragraph 133, Army Regulations, 1895, although not brought to trial for his absence as an offense. The forfeiture is a stoppage by operation of law irrespective of any punishment that may be imposed, and whether any be imposed or not. Thus a soldier acquitted under a charge of desertion is acquitted of the absence without leave involved in the charge, and can not be punished therefor; but if he has been absent without leave in fact, he incurs the forfeiture specified in the regulation. And a soldier brought to trial for, and convicted of, an absence without leave, is subject to the forfeiture, though none be adjudged in the sentence. Otherwise, however, if the findings be disapproved as not sustained by the testimony. [But

<sup>a</sup> See, as to the general rule on this subject, General Orders 82, Headquarters of Army, 1866; also paragraph 133, Army Regulations of 1895.

## REMOVAL OF THE CHARGE OF DESERTION.

Charges of desertion removed from record of certain volunteers.

Sec. 1, Mar. 2, 1889, v. 25, p. 869.

**1052.** That the charge of desertion now standing on the rolls and records in the office of the Adjutant General of the United States Army against any soldier who served in the late war in the volunteer service shall be removed in all cases where it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such soldier served faithfully until the expiration of his term of enlistment, or until the first day of May, anno domini eighteen hundred and sixty five, having previously served six months or more, and, by reason of absence from his command at the time the same was mustered out, failed to be mustered out and to receive an honorable discharge, or that such soldier absented himself from his command, or from hospital while suffering from wounds, injuries, or disease received or contracted in the line of duty and was prevented from completing his term of enlistment by reason of such wounds, injuries, or disease.<sup>1</sup> *Act of March 2, 1889 (25 Stat. L., 869).*

Applications for removal.  
Sec. 2, *ibid.*

**1053.** That the Secretary of War is hereby authorized to remove the charge of desertion from the record of any regular or volunteer soldier in the late war upon proper application therefor, and satisfactory proof in the following cases:

Return to duty.

First. That such soldier, after such charge of desertion was made, and within a reasonable time thereafter, voluntarily returned to his command and served faithfully to the end of his term of service, or until discharged.

Absence while sick or wounded.

Second, That such soldier absented himself from his command or from hospital while suffering from wounds, injuries, or disease, received or contracted in the line of duty, and upon recovery voluntarily returned to his command and served faithfully thereafter, or died from such wounds, injuries, or disease while so absent, and before the date of muster out of his command, or expiration of his term of service, or was prevented from so returning by reason of

the stoppage incurred under paragraph 133, Army Regulations, is enforced only upon a conviction by court-martial. (*Ibid.*, par. 3.)

The forfeiture specified in paragraph 133, Army Regulations, should not be enforced for absences of less than one day, but the soldier should be left to be punished by sentence of summary court. Thus where the unauthorized absence was for but seven and a half hours, a forfeiture of a day's pay would deprive the soldier of pay for sixteen and a half hours which he had actually earned. *Held*, therefore, that a stoppage of one day's pay in such a case was not warranted. (*Ibid.*, par. 4.)

Where a soldier is reported by the War Department as absent without leave from a certain date, and is subsequently restored to duty, the date of his return not being known, an approximate date, determined from the facts in the case, may be assumed as the date of his return. (3 Dig. Compt. Dec., 9.)

<sup>1</sup> This statute replaces the acts of August 7, 1882 (22 Stat. L., 347), July 5, 1884 (23 Stat. L., 119), and May 17, 1886 (24 Stat. L., 51), in pari materia, and includes all the classes, with some additions, mentioned in these enactments.

such wounds, injuries, or diseases before such muster out, or expiration of service.

Third. That such soldier was a minor, and was enlisted without the consent of his parent or guardian, and was released or discharged from such service by the order or decree of any State or United States court on habeas corpus or other judicial proceedings; and in such case, such soldier shall not be entitled to any bounty or allowance, or pay for any time such soldier was not in the performance of military duty. *Sec. 2, ibid. Amended by act of March 2, 1891 (26 Stat. L., 824).*

Minors discharged by order of court.  
Sec. 2, *ibid.*  
Mar. 2, 1891, v. 26, p. 824.

1054. That the charge of desertion now standing on the rolls and records in the office of the Adjutant General of the Army against any regular or volunteer soldier who served in the late war of the rebellion by reason of his having enlisted in any regiment, troop, or company, or in the United States Navy or Marine Corps, without having first received a discharge from the regiment, troop, or company in which he had previously served, shall be removed in all cases wherein it shall be made to appear to the satisfaction of the Secretary of War, from such rolls and records, or from other satisfactory testimony, that such re-enlistment was not made for the purpose of securing bounty or other gratuity that he would not have been entitled to, had he remained under his original term of enlistment; that the absence from the service did not exceed four months, and that such soldier served faithfully under his re-enlistment. *Sec. 3, ibid.*

Removal of charge where soldier re-enlisted.  
Sec. 3, *ibid.*

Limitation.

1055. That whenever it shall appear from the official records in the office of the Adjutant General, United States Army, that any regular or volunteer soldier of the late war was formally restored to duty from desertion by the Commander competent to order his trial for the offense, or, having deserted and being charged with desertion, was, on return to the service, suffered, without such formal restoration, to resume his place in the ranks of his command, serving faithfully thereafter until the expiration of his term, such soldier shall not be deemed to rest under any disability because of such desertion in the prosecution of any claim for pension, on account of disease contracted, or wounds or injuries received in the line of his duty as a soldier. *Sec. 4, ibid.*

Return to duty without trial, etc.  
Sec. 4, *ibid.*

1056. That when the charge of desertion shall be removed under the provisions of this act from the record of any soldier, such soldier, or, in case of his death, the heirs or legal representatives of such soldier, shall receive the pay and bounty due to such soldier. *Sec. 5, ibid.*

Pay and bounty.  
Sec. 5, *ibid.*



Not entitled to pay, etc., while absent without leave.  
Ibid.

**1057.** That this act shall not be so construed as to give to any such soldier, or, in case of his death, to the heirs or legal representatives of any such soldier, any pay, bounty, or allowance for any time during which such soldier was absent from his command without proper authority, nor shall it be so construed as to give any pay, bounty, or allowance to any soldier, his heirs or legal representatives, who served in the Army a period of less than six months. *Sec. 5, ibid.*

Mexican war soldiers.

Application for removal of charge of desertion.

*Sec. 6, ibid.*

**1058.** That the Secretary of War be, and he hereby is authorized and directed to amend the military record of any soldier who enlisted for the war with Mexico, upon proper application, where the rolls and records of the Adjutant General's office show the charge of desertion against him, when such rolls and records show the facts set out in the following cases:

Length of service.

First. That said soldier served faithfully the full term of his enlistment, or having served faithfully for six months or more, and until the fourth day of July anno domini eighteen hundred and forty-eight, left his command without having received a discharge.

Voluntary return.

Second. That such soldier, after said charge of desertion was entered on the rolls, voluntarily returned to his command within a reasonable time, and served faithfully until discharged. *Sec. 6, ibid.*

Cases excepted.  
*Sec. 7, ibid.*

**1059.** That the provisions of this act shall not be so construed as to relieve any soldier from the charge of desertion who left his command from disaffection or disloyalty to the Government, or to evade the dangers and hardships of the service, or whilst in the presence of the enemy (not being sick or wounded), or while in arrest or under charges for breach of military duty, or in case of a soldier of the Mexican War, who did not actually reach the seat of war. *Sec. 7, ibid.*

Military record corrected and honorable discharge to issue.

*Sec. 8, ibid.*

**1060.** That when such charge of desertion is removed under the provisions of this act, the soldier shall be restored to a status of honorable service, his military record shall be corrected as the facts may require, and an honorable discharge shall be issued in those cases where the soldier has received none; and he shall be restored to all his rights as to pension, pay, or allowances as if the charge of desertion had never been made; and in case of the death of said soldier, his widow or other legal heir shall be entitled to the same rights as in case of other deceased honorably discharged soldiers. *Sec. 8, ibid.*

Pension, etc., claims.

No pay while absent.

**1061.** That this act shall not be construed to give to any

soldier, or his legal representatives or heir, any pay or allowance for any period of time he was absent without leave, and not in the performance of military duty. *Sec. 8, ibid.*

1062. That all applications for relief under this act shall be made to and filed with the Secretary of War within the period of three years from and after July first, eighteen hundred and eighty nine, and all applications not so made and filed within said term of three years shall be forever barred, and shall not be received or considered. *Sec. 9, ibid.*

Claims to be filed within three years from July 1, 1889. Secs. 9 and 10, *ibid.*

1063. That all acts and parts of acts inconsistent with the provisions of this act are hereby repealed.<sup>1</sup> *Sec. 10, ibid.*

1064. That section nine of the act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, passed March second, anno Domini eighteen hundred and eighty-nine, be, and the same is hereby, so amended as to extend the time of limitation of the operation of said section for the period of two years from the first day of July, eighteen hundred and ninety-two. *Act of July 27, 1892 (27 Stat. L., 278).*

Time extended for applications. July 27, 1892, v. 27, p. 278.

1065. That section nine of the Act for the relief of certain volunteer and regular soldiers of the late war and the war with Mexico, approved March second, eighteen hundred and eighty-nine, be, and the same is hereby, so amended as to remove the limitation of time within which applications for relief may be received and acted upon under the provisions of said Act. *Act of March 2, 1895 (28 Stat. L., 814).*

Time extended for applications. Mar. 2, 1895, v. 28, p. 814.

<sup>1</sup>The persons from whose military record there may be a removal of the charge of desertion, under the act of March 2, 1889, chapter 390, are those against whom such a charge is "now standing." Deserters, therefore, whose cases had, at the date of the act, been judicially duly disposed of—by trial, conviction, and sentence by court-martial—are not within the purview of the statute. (Dig. J. A. Gen., 350, par. 43.)

*Held*, that a soldier had "served faithfully" in the sense of sec. 1 of the last-named act when, having been sentenced to reduction and confinement on conviction of desertion, his sentence had been duly executed, and he had thereupon returned to duty and served for a considerable further period in a status of honor. (*Ibid.*, par. 44.)

The act of 1889 provides that the charge of desertion shall be removed if the soldier has "served faithfully until \* \* \* May 1, 1865, having previously served six months or more" \* \* \* *Held*, that the six months of service need not have been continuous, provided they were actually served before May 1, 1865, and the soldier was in service at that date. (*Ibid.*, par. 45.)

*Held*, that a soldier was not within the description of section 2 (third) of the act of 1889, of having been "discharged" from service by a court of "competent jurisdiction," who had, as a minor, enlisted without consent, been discharged upon habeas corpus by a State court. (*Ibid.*, 351, par. 46.)

A pardon does not operate retroactively, and can not therefore "remove a charge" of desertion. It does not wipe out the fact that the party did desert, nor can it make the record say that he did not desert. It can not change facts of history. Nor can a pardon restore amounts which have been actually forfeited by desertion. (*Ibid.*, par. 47.)

The restoration of a deserter to duty without trial under par. 132, A. R. [1895], does not operate as an acquittal, or relieve the deserter from the forfeitures of pay (including retained pay) incurred by operation of law under paragraphs 1380 and 1381, A. R. 1895. (*Ibid.*, 351, par. 48.)

A pardon does not operate retroactively, and can not therefore "remove a charge" of desertion. It does not wipe out the fact that the party did desert, nor can it make the record say that he did not desert. It can not change facts of history. Nor can a pardon restore amounts which have been actually forfeited by desertion. (*Ibid.*, par. 47.)

## STATUTE OF LIMITATIONS IN DESERTION.

Statute of limitation in desertion.  
Apr 11, 1890, v. 26, p. 54.

**1066.** No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered in to the service.<sup>1</sup> *Act of April 11, 1890 (26 Stat. L., 54).*

## MISCELLANEOUS PROVISIONS.

Exemption from arrest for debt.  
Sec. 1237, R. S.

Par.  
**1067.** Exemption of enlisted men from arrest for debt.

Par.  
**1068.** Enlisted men not to be used as servants.

**1067.** No enlisted man shall, during his term of service, be arrested on mesne process, or taken or charged in execution for any debt, unless it was contracted before his enlistment, and amounted to twenty dollars when first contracted.

Enlisted men not to be used as servants.

**1068.** No officer shall use an enlisted man as a servant in any case whatever.

Sec. 14, July 15, 1870, v. 16, p. 319. Sec. 1232, R. S.

## DECEASED SOLDIERS.

Deceased soldiers' effects.  
126 Art. War.

Par.  
**1069.** Deceased soldiers' effects.

Par.  
**1070.** Officers charged with effects of deceased soldiers to account for same.

**1069.** In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immedi-

<sup>1</sup> The so-called "deserter's release," provided for by General Orders 55 of 1890, is accorded when, by reason of the period which has elapsed since the end of his term of enlistment, the deserter could successfully plead the statute of limitations to a prosecution for his desertion. This period is complete at the expiration of seven years from the date of the enlistment or of two years from the end of its term. But where a soldier, who would have been eligible for such release on May 9, 1894, was, in February preceding, arrested, brought to trial, convicted, and sentenced to be dishonorably discharged, and was so discharged accordingly, *held* that he was not within the privilege of the General Orders, and that the release could not be accorded him. [As to the purpose and effect of this "Release," see Circular No. 5 (H. Q. A.), 1894.] (Dig. J. A. Gen., 349, par. 40.)

The "deserter's release" is intended for deserters in whose favor the limitation of the present one hundred and third article of war has fully run, and who therefore have a perfect defense to a prosecution. It was designed to secure them against proceedings for desertion and to obviate the expenses to which the Government might be put in the matter of their arrest and their trial. But it is not, and can not, in view of the provisions of article 4, serve as a discharge from the Army. The language of General Orders 55 of 1890, which describes it as a release "from the Army" is therefore faulty. (Ibid., 350, par. 41.)

A deserter who has been once dishonorably discharged is not a subject for the "release"—does not belong to the class of persons for whom it is intended. It is designed for soldiers actually in service. It can not therefore now be given to one who was a soldier of a volunteer organization during the late war. Nor can it be issued in a case of a soldier who has deceased. (Ibid., par. 42.)

ately secure all his effects then in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.<sup>1</sup> *One hundred and twenty-sixth Article of War.*

**1070.** Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.<sup>2</sup> *One hundred and twenty-seventh Article of War.*

Officers charged with effects of deceased soldiers to account for same.  
127 Art. War.

#### <sup>1</sup> DISPOSITION OF EFFECTS.

When a soldier is killed in action, or dies at any post, hospital, or station, it shall be the duty of his immediate commander to secure his effects and to prepare the inventory required by the one hundred and twenty-sixth article of war, according to prescribed form. Duplicates of the inventory, with final statements, will be forwarded direct to the Adjutant-General of the Army. (Par. 158, A. R., 1895.)

<sup>2</sup>Should the effects of a deceased soldier not be claimed within thirty days, they will be sold by a council of administration under the authority of the post commander, and the proceeds transferred to the commander of the company to which the deceased belonged, by whom they will be deposited with a paymaster to the credit of the United States. Duplicate receipts will be taken, one of which will be sent direct to the Adjutant-General of the Army and the other retained with the company records. (Par. 159, A. R., 1895.)

In all cases of sale by a council of administration, a detailed statement of the proceeds, duly certified by the council and commanding officer, will accompany the paymaster's receipt forwarded by the company commander to the Adjutant-General of the Army. The statement will be indorsed: "Report of the proceeds of the effects of — day of —, late of company —, — regiment of —, who died at —, the — day of —, —." (Par. 160, *ibid.*)

The effects will be delivered, when called for, to the legal representatives of the deceased, and the receipts therefor forwarded to the Adjutant-General of the Army. Applications for arrears of pay and proceeds of sale of effects of deceased soldiers should be addressed to the Auditor for the War Department, Washington, D. C., who settles such accounts. (Par. 161, *ibid.*)

In the settlement of the accounts of deceased soldiers, the accounting officers dispense with administration, and, as it were, administer themselves, paying to the persons entitled such amounts as may be found to be due the deceased in a final settlement of his accounts with the United States. (3 Compt. Dec., 197.)

#### FUNERAL EXPENSES.

The remains of deceased soldiers will be decently inclosed in coffins and transported by the Quartermaster's Department to the nearest military post or national cemetery for burial, unless the commanding officer deem burial at the place of death to be proper, when a report of the fact will be made to the Adjutant-General of the Army. The expense of transporting the remains is payable from the appropriation for Army transportation; other expenses of burial are limited to \$15 for noncommissioned officers and \$10 for private soldiers. (Par. 162, A. R., 1895.)

The annual acts of appropriation since that of August 8, 1846 (9 Stat. L., 68), have contained provision for the expenses of interment of noncommissioned officers and soldiers.

# CHAPTER XXIX.

## THE TROOPS OF THE LINE.

### CAVALRY.

Par.	Par.
1071. Cavalry regiment; organization.	1076. Artillery battery.
1072. Cavalry troop.	1077. Light battery.
1073. Colored cavalry regiments.	1078. Infantry regiment; organization.
1074. Dismounted cavalry.	1079. Infantry company.
1075. Artillery regiment; organization.	1080. Colored infantry regiments.

Cavalry regiment; organization.

Aug. 3, 1861, c. 42, s. 12, v. 12, p. 289; July 17, 1862, c. 201, s. 11, v. 12, p. 599; Jan. 6, 1863, c. 7, v. 12, p. 634; Mar. 3, 1863, c. 75, s. 37, v. 12, p. 737; July 28, 1866, c. 299, s. 3, v. 14, p. 332; Mar. 3, 1869, c. 24, s. 5, v. 15, p. 318; July 15, 1870, c. 294, ss. 9, 10, v. 16, p. 218; July 24, 1876; c. 226, v. 19, p. 98; Aug. 15, 1876, c. 301, v. 19, p. 204; Feb. 27, 1877, c. 69, v. 19, pp. 241, 242.

Sec. 1102, R. S.

1071. Each regiment of cavalry<sup>1</sup> shall consist of twelve troops, one colonel, one lieutenant-colonel, three majors, one adjutant, one quartermaster, one veterinary surgeon, with the rank of regimental sergeant-major, one sergeant-major, one quartermaster-sergeant, one saddler-sergeant, one chief musician, who shall be instructor of music, and one chief trumpeter. Two assistant surgeons may be allowed to each regiment, and the seventh, eighth, ninth and tenth regiments shall have an additional veterinary surgeon. The adjutant and the quartermaster of each regiment shall be extra lieutenants, selected from the first or second lieutenants of the regiment.<sup>2</sup>

<sup>1</sup> Of the several cavalry regiments now composing the peace establishment, the first, a regiment of dragoons, was authorized by the act of March 2, 1833 (4 Stat. L., 652). A second regiment of dragoons was authorized by the act of May 23, 1836 (5 Stat. L., 32). The second regiment of dragoons was converted into a regiment of riflemen by the act of August 23, 1842 (5 Stat. L., 512), but was reconverted into a regiment of dragoons by the act of April 4, 1844 (5 Stat. L., 654). A regiment of mounted riflemen was added to the establishment by the act of May 19, 1846 (9 Stat. L., 13). Two regiments of cavalry (known as the First and Second) were authorized by the act of March 3, 1855 (10 Stat. L., 635). A third regiment of cavalry was organized by order of the President on May 4, 1861, confirmed by the act of July 29, 1861 (12 Stat. L., 279). In accordance with the authority conferred by the act of August 3, 1861, the six mounted regiments of the Army were consolidated into one corps and designated as follows:

- The First Regiment of Dragoons, as the First Cavalry.
- The Second Regiment of Dragoons, as the Second Cavalry.
- The Regiment of Mounted Riflemen, as the Third Cavalry.
- The First Regiment of Cavalry, as the Fourth Cavalry.
- The Second Regiment of Cavalry, as the Fifth Cavalry.
- The Third Regiment of Cavalry, as the Sixth Cavalry.

Four regiments of cavalry, the Seventh, Eighth, Ninth, and Tenth, the Ninth and Tenth composed of colored men, were added to the establishment under the authority conferred by the act of July 28, 1866.

The act of November 21, 1877 (20 Stat. L., 2), contained a proviso that "cavalry regiments may be recruited to one hundred men in each company, and kept as near as practicable at that number, and a sufficient force of cavalry shall be employed in the defense of the Mexican and Indian frontier of Texas: *Provided*, That nothing herein contained shall authorize the recruiting the number of men on the Army rolls, including Indian scouts and hospital stewards, beyond twenty-five thousand."

#### <sup>2</sup>THE REGIMENTAL STAFF.

The staff of a regiment consists of the adjutant and quartermaster, and they will be so designated. They will be appointed by the regimental commander, who will at once report his action to the Adjutant-General by telegraph; the appointment of the quartermaster is made subject to the approval of the Secretary of War. Each appointment will take effect the day on which it is made, and the officer appointed will be entitled to the pay pertaining thereto from the date when he assumes the duties under such appointment. (Par. 233, A. R., 1895.)

The adjutant or quartermaster may hold office for four years, including all periods of such service, and no longer. He will not be eligible for a second tour of such

**1072.** Each troop of cavalry shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, five sergeants, four corporals, two trumpeters, two farriers, one saddler, one wagoner, and such number of privates, not exceeding seventy-eight, as the President may direct.<sup>1</sup>

Cavalry troop.  
July 28, 1866, c. 299, s. 3, v. 14, p. 372; July 17, 1862, c. 201, s. 11, v. 12, p. 599; Jan. 6, 1863, c. 7, v. 12, p. 634; Mar. 3, 1863, c. 75, s. 37, v. 12, p. 737; s. 10, v. 16, p. 318.  
July 15, 1870, c. 294, s. 10, v. 16, p. 318.  
Sec. 1103, R. S.

**1073.** The enlisted men of two regiments of cavalry shall be colored men.

Colored cavalry regiments.  
July 28, 1866, c. 299, s. 3, v. 14, p. 332.  
Sec. 1104, R. S.

**1074.** Any portion of the cavalry force may be armed and drilled as infantry or dismounted cavalry, at the discretion of the President.

Dismounted cavalry.  
July 28, 1866, c. 299, s. 3, v. 14, p. 332.  
Sec. 1105, R. S.

## ARTILLERY.<sup>2</sup>

**1075.** Each regiment of artillery shall consist of twelve batteries, one colonel, one lieutenant-colonel, one major for every four batteries, one adjutant, one quartermaster and commissary, one sergeant-major, one quartermaster-sergeant, one chief musician, who shall be instructor of music, and two principal musicians. The adjutant and quartermaster and commissary shall be extra lieutenants, selected from the first or second lieutenants of the regiment.<sup>3</sup>

Artillery regiment.  
July 29, 1861, c. 24, ss. 1, 2, v. 12, p. 280; July 28, 1866, c. 229, s. 2, v. 14, p. 332; Mar. 3, 1869, c. 124, s. 5, v. 15, p. 318; July 15, 1870, c. 294, s. 10, v. 16, p. 318.  
Sec. 1099, R. S.

**1076.** Each battery of artillery shall consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, four corporals, two musicians, two artificers, one wagoner, and as many privates, not exceeding one hundred and twenty-two, as the President may direct. One first lieutenant, one second lieutenant, two sergeants and four corporals may be added to this battery organization at the discretion of the President.

Artillery battery.  
July 29, 1861, c. 24, s. 1, v. 12, p. 279; July 28, 1866, c. 299, s. 2, v. 14, p. 332; July 15, 1870, c. 294, s. 10, v. 16, p. 318.  
Sec. 1100, R. S.

**1077.** One battery in each regiment of artillery, to be designated by the President, shall be equipped as light

Light battery.  
Mar. 2, 1821, c. 13, s. 2, v. 3, p. 615; Mar. 3, 1847, c. 61, s. 18, v. 9, p. 186.  
Sec. 1101, R. S.

duty nor for appointment or reappointment to either position, except to serve an unexpired term of four years. (Par. 234, *ibid.*)

A regimental commander is restricted in his choice of staff officers to the lieutenants on duty with the regiment and who are not at a school of instruction nor with light batteries. Should he desire to appoint a lieutenant absent from the regiment, the lieutenant must join before the appointment can be made. (Par. 235, *ibid.*)

Medical officers are no longer attached to regiments on the peace establishment.

<sup>1</sup>Since 1883 companies of cavalry have been designated "troops." (Circulars 8 and 9, A. G. O. 1883; see also Cavalry Drill Regulations.) By Executive Orders the enlisted men of Troops L and M of each regiment of cavalry were distributed among the other troops. (G. O. 79 and 120, A. G. O. 1890.) By General Orders No. 28, Adjutant-General's Office of 1891, certain cavalry troops were to be composed of Indians. The enlistment of Indians having been discontinued these organizations have, with the exception of Troop L, Seventh Cavalry, again become skeleton troops. The Indians of Troop L, Seventh Cavalry, are ultimately to be discharged. (Report of Adjutant-General to the Secretary of War, pp. 7, 10.)

<sup>2</sup>At the general reduction of the Army, effected in pursuance of the act of March 2, 1821 (3 Stat. L., 615), the artillery was consolidated into four regiments of nine companies each, one of which, in each regiment, was to be designated and equipped as light artillery. The Ordnance Department was merged in the artillery, a supernumerary captain, for ordnance duty, was added to each regiment, and the President was authorized "to select from the regiments of artillery such officers as may be necessary to perform ordnance duties who, while so detached, shall be subject only to the orders of the War Department." The Ordnance Department was separated from the artillery by the act of May 25, 1832 (4 Stat. L., 605). One company was added to each regiment by the act of July 5, 1838 (5 Stat. L., 256), and two companies by section 18 of the act of March 3, 1847 (9 Stat. L., 184), making twelve companies in all. The act of March 3, 1847, authorized the President to designate an additional company in each regiment to be armed and equipped as light artillery. The fifth regiment was added, as a regiment of light artillery, by order of the President, on May 5, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. L., 279).

<sup>3</sup>See note to paragraph 1071, ante.

artillery, and one other battery may be so designated and equipped, when the President may deem it necessary.<sup>1</sup>

### INFANTRY.<sup>2</sup>

**Infantry regi-** **1078.** Each infantry regiment shall consist of ten com-  
ment.  
July 28, 1866, c. 299, s. 6, v. 14, p. 333; Mar. 3, 1869, c. 124, s. 5, v. 15, p. 318; July 15, 1870, c. 294, ss. 2, 10, v. 16, p. 318.  
Sec. 1106, R. S.

panies, one colonel, one lieutenant-colonel, one major, one adjutant, one quartermaster, one sergeant-major, one quartermaster-sergeant, and one chief musician, who shall be instructor of music, and two principal musicians. The adjutant and the quartermaster shall be extra lieutenants selected from the first or second lieutenants of the regiment.<sup>3</sup>

**Infantry com-** **1079.** Each company of infantry shall consist of one cap-  
pany.  
July 28, 1866, c. 299, s. 6, v. 14, p. 333; July 15, 1870, c. 294, ss. 2, 10, v. 16, pp. 317, 318.  
Sec. 1107, R. S.

tain, one first lieutenant, one second lieutenant, one first sergeant, one quartermaster-sergeant, four sergeants, four corporals, two artificers, two musicians, one wagoner, and fifty privates, and the number of privates may be increased at the discretion of the President not to exceed one hundred, whenever the exigencies of the service require such increase.<sup>4</sup>

**Colored infan-** **1080.** The enlisted men of two regiments of infantry shall  
try regiments.  
July 28, 1866, c. 299, s. 4, v. 14, p. 332; Mar. 3, 1869, c. 124, s. 2, v. 15, p. 318.  
Sec. 1108, R. S.

be colored men.

<sup>1</sup> Two batteries in each regiment of artillery are now, by Executive Order, designated as light batteries.

The First Regiment of infantry was authorized by the act of April 30, 1790 (1 Stat. L., 119), the Second by the act of March 3, 1791 (*ibid.*, 222), the Third and Fourth by the act of May 30, 1796 (*ibid.*, 483), the Fifth, Sixth, and Seventh regiments by the act of June 26, 1812 (2 Stat. L., 764), and the number of regiments of infantry was fixed at seven by the act to reduce and fix the military establishment, approved March 2, 1821. The Eighth Regiment was added by the act of July 5, 1838, and the President was authorized "whenever he may deem it expedient, to cause not exceeding two of the regiments of infantry to be armed and equipped as regiments of riflemen, and one other of the regiments of infantry to be armed and equipped and to serve as a regiment of light infantry." The Ninth and Tenth regiments were authorized by the act of March 3, 1855 (10 Stat. L., 701). The Eleventh to the Nineteenth regiments, inclusive, were organized by order of the President on May 4, 1861, the organization being confirmed by the act of July 29, 1861 (12 Stat. L., 279). Twenty-five regiments, from the Twentieth to the Forty-fifth, inclusive, were authorized by the act of July 28, 1866, of which four, from the Thirty-eighth to the Forty-first, inclusive, were to be composed of colored men, and four, from the Forty-second to the Forty-fifth, inclusive, were to be composed of men who had been wounded in the line of duty and were to constitute a Veteran Reserve Corps. At the reduction effected in pursuance of section 2 of the act of March 3, 1869 (15 Stat. L., 318), the number of infantry regiments was reduced to twenty-five. In effecting the consolidation required by the act above cited, the designations of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Twelfth, Thirteenth, Twentieth, and Twenty-third regiments were not changed; the Eleventh Regiment was formed, by consolidation, from the Twenty-fourth and Twenty-ninth; the Fourteenth from the Fourteenth and Forty-fifth; the Fifteenth from the Fifteenth and Thirty-fifth; the Sixteenth from the Eleventh and Thirty-fourth; the Seventeenth from the Seventeenth and Forty-fourth; the Eighteenth from the Eighteenth and Twenty-fifth; the Nineteenth from the Nineteenth and Twenty eighth; the Twenty-first from the Twenty-first and Thirty-second; the Twenty-second from the Twenty-second and Thirty-first; the Twenty-fourth from the Thirty-eighth and Forty first; the Twenty-fifth from the Thirty-ninth and Fortieth.

The regiments organized prior to the 4th of May, 1861, were composed of ten companies each; those organized by Executive Order of that date were each composed of three battalions of eight companies each. The organization prescribed by the act of July 28, 1866, which is now in force, fixes the organization of an infantry regiment at ten companies, of a cavalry regiment at twelve companies, and a regiment of artillery at the same number.

<sup>3</sup> See note 2 to paragraph 1071, ante.

<sup>4</sup> The enlisted men of Companies I and K of each regiment of infantry were, by General Orders Nos. 76 and 120 of 1890, from the Adjutant-General's Office, distributed among the other companies of the several regiments. Under the authority conferred by General Orders, No. 28, of 1891, from the Adjutant-General's Office, companies of infantry have been organized the enlisted men of which were Indians. Subsequently the enlistment of Indians was discontinued, and these organizations have again become skeleton companies. (Report of Adjutant-General to the Secretary of War, pp. 7, 10.)

## CHAPTER XXX.

### THE MILITARY ACADEMY—THE SERVICE SCHOOLS.

#### THE MILITARY ACADEMY.

Par.  
1081. Officers, professors, and instructors.  
1082. Assignment of law professor.  
1083. Professor of modern languages.  
1084. Associate professor of mathematics.  
1085. Chaplain of the Military Academy.  
1086. Supervision of Academy.  
1087. Appointment of officers and professors.  
1088. Selection of officers.  
1089. No graduate to be assigned to duty at the Academy until two years after graduation.  
1090. Local rank of superintendent and commandant.  
1091. Superintendent's command.  
1092. Commandant of cadets.  
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1094. Pay of professors.  
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1896. Assistant professors and instructors.  
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Par.  
1103. Cadets at large.  
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1105. Age of appointees.  
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1109. Pay of cadets.  
1110. Graduates to be commissioned, if competent, in any arm or corps in which a vacancy exists.  
1111. But one supernumerary officer to be attached to each company.  
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1113. Cadet battalion.  
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1126. Purchases for library.  
1127. Purchases of scientific and technical supplies.  
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Par.

- 1130. Military Academy band.
- 1131. Pay of leader.
- 1132. Composition of band.
- 1133. Pay of band.
- 1134. General Army service men.
- 1135. Limit of strength.

Par.

- 1136. Pay of certain enlisted men.
- 1137. Study of effects of alcoholic drinks and narcotics.
- 1138. Enforced.
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Officers, professors, and instructors.

Mar. 16, 1802, c. 9, s. 28, v. 2, p. 137; June 12, 1858, c. 156, s. 1, v. 11, p. 333; Apr. 29, 1812, c. 72, s. 2, v. 2, p. 720; Apr. 14, 1818, c. 61, s. 2, v. 3, p. 426; July 20, 1840, c. 50, s. 3, v. 5, p. 398; July 5, 1838, c. 162, s. 19, v. 5, p. 259; Aug. 8, 1846, c. 96, s. 3, v. 9, p. 71; Aug. 6, 1852, c. 81, v. 10, p. 29; Feb. 16, 1857, c. 45, v. 11, p. 161; Mar. 3, 1851, c. 22, v. 9, p. 594; Feb. 28, 1867, c. 100, s. 3, v. 14, p. 416; Feb. 16, 1857, c. 45, v. 11, p. 161; sec. 4, June 23, 1879, v. 21, p. 34; Jan. 16, 1895, v. 28, p. 630; Feb. 18, 1896, v. 29, p. 8.

Assignment of law professor.

June 6, 1874, v. 18, p. 60; June 1, 1880, v. 21, p. 153.

Professor of modern languages.

Sec. 4, June 23, 1879, v. 21, p. 34.

Associate professor of mathematics.

Pay and allowances.

Longevity pay.

Mar. 1, 1893, v. 27, p. 515.

**1081.** The United States Military Academy at West Point, in the State of New York, shall be constituted as follows: There shall be one superintendent; one commandant of cadets; one senior instructor in the tactics of artillery; one senior instructor in the tactics of cavalry; one senior instructor in the tactics of infantry; one professor and one assistant professor of civil and military engineering; one professor and one assistant professor of natural and experimental philosophy; one professor and one assistant professor of mathematics; one professor and one assistant professor of chemistry, mineralogy, and geology; one professor and one assistant professor of drawing; one professor of modern languages; one assistant professor of the French language; one assistant professor of the Spanish language; one assistant professor of law; one adjutant; one master of the sword; and one teacher of music.

Sec. 1309, R. S.

**1082.** That the Secretary of War may assign one of the judge-advocates of the Army to be professor of law. *Act of June 6, 1874 (18 Stat. L., 60).* *Provided,* That the Secretary of War may, in his discretion, assign any officer of the Army as professor of law.<sup>1</sup> *Act of June 1, 1880 (21 Stat. L., 153).*

**1083.** That when a vacancy occurs in the office of professor of the French language or in the office of professor of the Spanish language in the Military Academy, both these offices shall cease, and the remaining one of the two professors shall be professor of modern languages; and thereafter there shall be in the Military Academy one, and only one, professor of modern languages.<sup>2</sup> *Act of June 23, 1879 (21 Stat. L., 34).*

**1084.** There shall be appointed at the Military Academy from the Army, in addition to the professors authorized by the existing laws, an associate professor of mathematics, who shall receive the pay and allowances of a captain mounted, and when his service as associate professor of mathematics

<sup>1</sup> The acts of June 27, 1881 (21 Stat. L., 319), and June 30, 1882 (22 Stat. L., 125), contain a similar provision.

<sup>2</sup> The vacancy contemplated in this enactment occurred on June 30, 1882, upon the retirement of the professor of Spanish. The statute then became operative, and the professorships of the French and Spanish languages were merged in that of Modern Languages.

at the Academy exceeds ten years, he shall receive the pay and allowances of major; and hereafter there shall be allowed and paid to the said associate professor of mathematics ten per centum of his current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said associate professor of mathematics is hereby placed upon the same footing as regards restrictions upon pay and retirement from active service as officers of the Army. *Act of March 1, 1893 (27 Stat. L., 515).*

1085. That the duties of chaplain at the Military Academy shall hereafter be performed by a clergyman to be appointed by the President for a term of four years, and the said chaplain shall be eligible for reappointment for an additional term or terms and shall, while so serving, receive the same pay and allowances as are now allowed to a captain mounted. *Act of February 18, 1896 (29 Stat. L., 8).*

Chaplain of the Military Academy.  
Feb. 18, 1896;  
v. 29, p. 8.

#### SUPERVISION.

1086. The supervision and charge of the Academy shall be in the War Department, under such officer or officers as the Secretary of War may assign to that duty.<sup>1</sup>

Supervision of Academy.  
July 13, 1866, c. 176, s. 6, v. 14, p. 92.  
Sec. 1331, R. S.

#### THE ACADEMIC STAFF.

1087. The superintendent, the commandant of cadets, and the professors shall be appointed by the President. The assistant professors, acting assistant professors, and the adjutant shall be officers of the Army, detailed and assigned to such duties by the Secretary of War, or cadets assigned by the superintendent, under the direction of the Secretary of War.

Appointment of officers and professors.  
Feb. 28, 1803, c. 13, s. 2, v. 2, p. 206;  
June 12, 1858, c. 156, s. 1, v. 11, p. 333;  
Apr. 29, 1812, c. 72, s. 2, v. 2, p. 720;  
July 13, 1866, c. 176, s. 6, v. 14, p. 92.  
Sec. 1313, R. S.

1088. The superintendent and commandant of cadets may be selected, and all other officers on duty at the Academy may be detailed from any arm of the service; but the academic staff as such shall not be entitled to any command in the Army separate from the Academy.

Selection of officers.  
July 13, 1866, c. 176, s. 6, v. 14, p. 92.  
Sec. 1314, R. S.

1089. Hereafter no graduate of the Military Academy shall be assigned or detailed to serve at said Academy as a professor, instructor, or assistant to either, within two years after his graduation, and so much of the act of June thirtieth, eighteen hundred and eighty-two, as requires a longer service than two years for said assignments or

No graduate to be assigned to duty at the Academy within two years after graduation.  
July 26, 1895, v. 28, p. 151.

<sup>1</sup>The Military Academy is withdrawn from the control and supervision of department commanders by the terms of paragraph 190, Army Regulations of 1895.

details is hereby repealed.<sup>1</sup> *Act of July 26, 1894 (28. Stat. L., 151).*

Local rank of superintendent and commandant.

June 12, 1858, c. 156, s. 1, v. 11, p. 333.

Sec. 1310, R. S.

Superintendent's command.

Mar. 16, 1802, c. 9, s. 28, v. 2, p. 137;

Aug. 23, 1842, c. 186, s. 6, v. 5, p. 513.

Sec. 3111, R. S.

Commandant of cadets.

June 12, 1858, c. 156, s. 1, v. 11, p. 333.

Sec. 1312, R. S.

Superintendent and commandant, pay of.

June 12, 1858, c. 157, s. 1, v. 11, p. 333.

Sec. 1334, R. S.

Pay of professors.

Feb. 28, 1873, c. 210, v. 17, p. 479.

Sec. 4, June 23, 1879, v. 21, p. 34.

Sec. 1336, R. S.

**1090.** The superintendent and the commandant of cadets, while serving as such, shall have, respectively, the local rank of colonel and lieutenant-colonel of engineers.

**1091.** The superintendent, and, in his absence, the next in rank, shall have the immediate government and military command of the Academy, and shall be commandant of the military post of West Point.

**1092.** The commandant of the cadets shall have the immediate command of the battalion of cadets, and shall be instructor in the tactics of artillery, cavalry, and infantry,

**1093.** The superintendent of the Military Academy shall have the pay of a colonel, and the commandant of cadets shall have the pay of a lieutenant-colonel.

**1094.** Each of the professors of the military Academy whose service as professor at the Academy exceeds ten years shall have the pay and allowances of colonel, and all other professors shall have the pay and allowances of lieutenant-colonels; and the instructors of ordnance and science of gunnery and of practical engineering shall have the pay and allowances of major; and hereafter there shall be allowed and paid to the said professors ten per centum of their current yearly pay for each and every term of five years' service in the Army and at the Academy: *Provided*, That such addition shall in no case exceed forty per centum of said yearly pay; and said professors are hereby placed upon the same footing, as regards restrictions upon pay and retirement from active service, as officers of the Army.<sup>2</sup>

<sup>1</sup> The act of June 30, 1882 (22 Stat. L., 123), contained the requirement that no graduate of the Military Academy should be assigned or detailed to serve as a professor, instructor, or assistant to either, within four years after his graduation.

<sup>2</sup> Section 1336, Revised Statutes, provides that "each of the professors of the Military Academy whose service at the Academy exceeds ten years shall have the pay and allowances of colonel." Section 4 of the Army appropriation act of June 23, 1879, amends this section by inserting, after the word "service," the words "as professor." *Held* that professors who at the passage of the last statute were being paid as colonels because of having served at the Academy ten years, but who had not yet served there as professors for that period, could not legally continue to be so paid, but were entitled to be paid as lieutenant-colonels only until they had completed the term of special service contemplated by the act of 1879. (Dig. J. A. Gen., p. 615, par. 1.)

The professors of the Military Academy do not belong to the staff of the Army within the meaning of section 1205, Revised Statutes, since they have no military rank or grade. The fact that they are authorized by the President to wear the uniform of the rank as of which they are paid does not invest them with such rank. This can be given them by Congress alone. (*Ibid.*, par. 2.)

A captain of cavalry does not vacate his office as such by the acceptance of that of professor of the Military Academy, there being no incompatibility in the functions of the two offices. (*Ibid.*, par. 3.)

The professors of the Military Academy at West Point are commissioned officers of the Army, whose pay and allowances are assimilated to those of a lieutenant-colonel and a colonel; and in case of such disability as is described in section 4693, Revised Statutes, they are entitled to pensions at the same rate with officers of the rank of lieutenant-colonel. (17 Opin. Att. Gen., 359.)

**1095.** The professors of the Military Academy at West Point are placed on the same footing, as to retirement from active service, as officers of the Army.

**1096.** Each assistant professor and each senior assistant instructor of cavalry, artillery, and infantry tactics shall receive the pay of a captain.<sup>1</sup>

Retirement of professors. July 15, 1870, c. 294, s. 13, v. 16, p. 319.  
Sec. 1333, R. S. Assistant professors and instructors. Apr. 29, 1812, c. 72, s. 2, v. 2, p. 720; July 5, 1838, c. 81, s. 2, v. 10, p. 416; Feb. 28, 1837, R. S. Pay of assistant instructors of tactics. Mar. 3, 1875, v. 18, p. 467.

**1097.** That the assistant instructors of tactics commanding cadet companies at West Point shall receive the pay and allowances as assistant professors in the other branches of study.<sup>1</sup> *Act of March 3, 1875 (18 Stat. L., 467.)*

**1098.** That the Secretary of War be hereby directed to detail a competent officer to act as quartermaster and commissary for the battalion of cadets, by whom all purchases and issues of supplies of all kinds for the cadets, and all provisions for the mess, shall be made, and that all supplies of all kinds and description shall be furnished to the cadets at actual cost, without any commission or advance over said cost; and such officer so assigned shall perform all the duties of purveying and supervision for the mess, as now done by the purveyor, without other compensation.<sup>2</sup> *Act of August 7, 1876 (19 Stat. L., 126.)*

**1099.** The adjutant of the Military Academy shall have the pay of an adjutant of a cavalry regiment.

**1100.** The librarian and assistant librarian at the Military Academy shall each receive one hundred and twenty dollars a year additional pay.<sup>3</sup>

**1101.** The master of the sword at the Military Academy shall receive pay at the rate of fifteen hundred dollars a year, with fuel and quarters.

#### THE CORPS OF CADETS.

**1102.** The corps of cadets shall consist of one from each congressional district, one from each Territory, one from the District of Columbia, and ten from the United States

<sup>1</sup> Assistant professors at the Military Academy are entitled to the quarters of captains (9 Opin. Att. Gen., 284). The distinction contended for at the Military Academy between academic and military rank is not allowable in the choice of quarters. (5 Ibid., 627.)

<sup>2</sup> The annual appropriation acts, since that of March 31, 1884, have contained a provision for extra pay for the quartermaster and commissary of cadets at the rate of \$700 per annum, in addition to his pay as a captain of infantry. The act of June 30, 1892 (22 Stat. L., 123), authorizes the Secretary of War to detail a commissary sergeant to act as assistant to the commissary of cadets.

<sup>3</sup> The annual acts of appropriation from that of February 18, 1871 (16 Stat. L., 414), to that of July 26, 1894 (28 Stat. L., 156), contained a provision authorizing the payment of \$1,000 per annum for compensation of the librarian's assistant. In the acts of February 12, 1895 (28 Stat. L., 631), and March 6, 1896 (29 Stat. L., 49), the compensation of the librarian's assistant was fixed at \$1,200 per annum.

at large.<sup>1</sup> They shall be appointed by the President, and shall, with the exception of the ten cadets appointed at large, be actual residents of the congressional or territorial districts, or of the District of Columbia, respectively, from which they purport to be appointed.

**Cadets at large.** June 11, 1878, res. 4, v. 20, p. 111. **1103.** That the cadets at large at the Military Academy shall not hereafter exceed ten in all, and no new appointments at large shall be made until the number of such cadets heretofore appointed falls below ten. But this provision shall not be held to require the discharge of any cadet heretofore appointed. *Sec. 4, act of June 11, 1878 (20 Stat. L., 111).*

**Appointment in advance.** June 16, 1866, res. 49, s. 1, v. 14, p. 359. **Sec. 1317, R. S.** **1104.** Cadets shall be appointed one year in advance of the time of their admission to the Academy, except in cases where, by reason of death or other cause, a vacancy occurs which cannot be provided for by such appointment in advance; but no pay or other allowance shall be given to any appointee until he shall have been regularly admitted, as herein provided; and all appointments shall be conditional, until such provisions shall have been complied with.

**Age of appointees.** June 16, 1866, res. 49, s. 1, v. 14, p. 359. **Sec. 1318, R. S.** **1105.** Appointees shall be admitted to the Academy only between the ages of seventeen and twenty-two years, except in the following case:<sup>2</sup> Any person who has served honor-

<sup>1</sup> The provision of the act of March 3, 1875 (18 Stat. L., 467), authorizing the President "to fill any vacancy occurring at said Academy by reason of death, or other cause, of any person appointed by him" was repealed by section 4 of the act of June 11, 1878 (20 Stat. L., 111), paragraph 1103, post.

<sup>2</sup> **Qualifications.**—The age for the admission of cadets to the Academy is between 17 and 22 years. Candidates must be unmarried, at least 5 feet in height, free from any infectious or immoral disorder, and generally from any deformity, disease, or infirmity which may render them unfit for military service. They must be well versed in reading, in writing, including orthography, in arithmetic, and have a knowledge of the elements of English grammar, of descriptive geography (particularly of our own country), and of the history of the United States.

**Appointments—How made.**—Each Congressional district and Territory, also the District of Columbia, is entitled to have one cadet at the Academy. Ten are also appointed at large. The appointments (except those at large) are made by the Secretary of War, at the request of the Representative or Delegate in Congress from the district or Territory; and the person appointed must be an actual resident of the district or Territory from which the appointment is made. The appointments at large are specially conferred by the President of the United States.

**Manner of making applications.**—Applications can be made at any time, by letter to the Secretary of War, to have the name of the applicant placed upon the register that it may be furnished to the proper Representative or Delegate when a vacancy occurs. The application must exhibit the full name, date of birth, and permanent abode of the applicant, with the number of the Congressional district in which his residence is situated.

**Date of appointments.**—Appointments are required by law to be made one year in advance of the date of admission, except in cases where, by reason of death or other cause, a vacancy occurs which can not be provided for by such appointment in advance. These vacancies are filled in time for the next annual examination.

**Alternates.**—The Representative or Delegate in Congress may nominate a legally qualified second candidate, to be designated the alternate. The alternate will receive from the War Department a letter of appointment, and will be examined with the regular appointee, and if duly qualified will be admitted to the Academy in the event of the failure of the principal to pass the prescribed preliminary examinations.

\* The alternate will not be allowed to defer his reporting at West Point until the result of the examination of the regular appointee is known, but must report at the time designated in his letter of appointment. The alternate, like the nominee, should be designated as nearly one year in advance of date of admission as possible.

There being no provision whatever for the payment of the traveling expenses of either accepted or rejected candidates for admission, no candidate should fail to provide himself in advance with the means of returning to his home in case of his rejection before either of the examining boards, as he may otherwise be put to considerable trouble, inconvenience, and even suffering on account of his destitute condition. If

ably and faithfully not less than one year, in either the volunteer or regular service of the United States, in the late war for the suppression of the rebellion, and who possesses the other qualifications required by law, may be admitted between the ages of seventeen and twenty-four years.<sup>1</sup>

1106. Appointees shall be examined under regulations to be prescribed from time to time by the Secretary of War, before they shall be admitted to the Academy, and shall be required to be well versed in reading, writing, and arithmetic, and to have a knowledge of the elements of English grammar, of descriptive geography, particularly that of the United States, and of the history of the United States.<sup>2</sup>

Examination  
and qualifica-  
tion.  
Apr. 29, 1812, c.  
72, s. 3, v. 2, p. 721;  
June 16, 1866, res.  
49, v. 14, p. 359.  
Sec. 1319, R. S.

admitted, the money brought by him to meet such a contingency can be deposited with the treasurer on account of his equipment as a cadet or returned to his friends.

It is suggested to all candidates for admission to the Military Academy that before leaving their place of residence for West Point they should cause themselves to be thoroughly examined by a competent physician and by a teacher or instructor in good standing. By such an examination any serious physical disqualification or deficiency in mental preparation would be revealed and the candidate probably spared the expense and trouble of a useless journey and the mortification of rejection.

It should be understood that the informal examination herein recommended is solely for the convenience and benefit of the candidate himself and can in no manner affect the decision of the academic and medical examining boards at West Point.

See also, for opinions as to the residence and minority of candidates for appointment, Dig. J. A. Gen., 207-211.

<sup>1</sup> It being impossible for a candidate to conform to the conditions of this statute, it is now obsolete and no longer operative.

## <sup>2</sup> PHYSICAL EXAMINATION.

Every candidate is subjected to a rigid physical examination, and if there is found to exist in him any of the following causes of disqualification to such a degree as would immediately or at no very distant period impair his efficiency, he is rejected:

1. Feeble constitution and unsound health from whatever cause; indications of former disease; glandular swellings or other symptoms of scrofula.
2. Chronic cutaneous affections, especially of the scalp.
3. Severe injuries of the bones of the head; convulsions.
4. Impaired vision, from whatever cause; inflammatory affections of the eyelids; immobility or irregularity of the iris; fistula lachrymalis, etc.
5. Deafness; copious discharge from the ears.
6. Loss of many teeth, or the teeth generally unsound.
7. Impediment of speech.
8. Want of due capacity of the chest, and any other indication of a liability to a pulmonary disease.
9. Impaired or inadequate efficiency of one or both of the superior extremities on account of fractures, especially of the clavicle, contraction of a joint, deformity, etc.
10. An unusual excurvature or incurvature of the spine.
11. Hernia.
12. A varicose state of the veins of the scrotum or the spermatic cord (when large), hydrocele, hemorrhoids, fistulas.
13. Impaired or inadequate efficiency of one or both of the inferior extremities on account of varicose veins, fractures, malformation (flat feet), lameness, contraction, unequal length, bunions, overlying or supernumerary toes, etc.
14. Ulcers or unsound cicatrices of ulcers likely to break out afresh.

## ACADEMICAL EXAMINATION.

*Reading.*—In reading, candidates must be able to read understandingly, and with proper accent and emphasis.

*Writing and orthography.*—In writing and orthography they must be able, from dictation, to write sentences from standard pieces of English literature, both prose and poetry, sufficient in number to test their qualifications both in handwriting and orthography. They must also be able to write and spell correctly from dictation a certain number of standard test words.

*Arithmetic.*—In arithmetic they must be able—

First. To explain accurately and clearly its objects and the manner of writing and reading numbers—entire, fractional, compound, or denominate.

Second. To perform with facility and accuracy the various operations of addition, subtraction, multiplication, and division of whole numbers, abstract and compound or denominate, giving the rule for each operation, with its reasons, and also for the different methods of proving the accuracy of the work.

Third. To explain the meaning of reduction, its different kinds, its application to denominate numbers in reducing them from a higher to a lower denomination and

Oath.  
 Aug. 3, 1861, c.  
 42, s. 8, v. 12, p.  
 288; June 8, 1866,  
 c. 110, s. 2, v. 14,  
 p. 59.

Sec. 1320, R.S.

**1107.** Each cadet shall, previous to his admission to the Academy, take and subscribe an oath or affirmation in the following form:

“I, A B, do solemnly swear that I will support the Constitution of the United States, and bear true allegiance to

the reverse, and to equivalent decimals; to give the rule for each case, with its reasons, and to apply readily these rules to practical examples of each kind.

Fourth. To explain the nature of prime numbers and factors of a number; of a common divisor of two or more numbers, particularly of their greatest common divisor, with its use, and to give the rule, with its reasons, for obtaining it; also the meaning of a common multiple of several numbers, particularly of their least common multiple and its use, and to give the rule, with its reasons, for obtaining it, and to apply each of these rules to examples.

Fifth. To explain the nature of fractions, common or vulgar, and decimal; to define the various kinds of fractions, with the distinguishing properties of each; to give all the rules for their reduction, particularly from mixed to improper and the reverse, from compound or complex to simple, to their lowest terms, to a common denominator, from common to decimal and the reverse; for their addition, subtraction, multiplication, and division, with the reason for each change of rule, and to apply each rule to examples.

Sixth. To define the terms “ratio” and “proportion;” to give the properties of proportion and the rules and their reasons for stating and solving questions in both simple and compound proportion, or single and double rule of three, and to apply these rules to examples.

Seventh. The candidates must not only know the principles and rules referred to above, but they are required to possess such a thorough understanding of all the fundamental operations of arithmetic as will enable them to combine the various principles in the solution of any complex problem which can be solved by the methods of arithmetic. In other words, they must possess such a complete knowledge of arithmetic as will enable them to take up at once the higher branches of mathematics without further study of arithmetic.

Eighth. It is to be understood that the examination in these branches may be either written or oral, or partly written and partly oral; that the definitions and rules must be given fully and accurately, and that the work of all examples, whether upon the blackboard, slate, or paper, must be written plainly and in full, and in such a manner as to show clearly the mode of solution.

*Grammar.*—In English grammar candidates must be able—

First. To define the parts of speech and give their classes and properties; to give inflections, including declension, conjugation, and comparison; to give the corresponding masculine and feminine gender nouns; to give and apply the ordinary rules of syntax.

Second. To parse fully and correctly any ordinary sentence, omitting rules, declensions, comparisons, and principal parts, but giving the subject of each verb, the governing word of each objective case, the word for which each pronoun stands or to which it refers, the words between which each preposition shows the relation, precisely what each conjunction connects, what each adjective and adverb qualifies or limits, the construction of each infinitive, and generally showing a good knowledge of the function of each word in the sentence. Omissions will be taken to indicate ignorance.

Third. To correct in sentences or extracts any ordinary grammatical errors, such as are mentioned and explained in ordinary grammars.

It is not required that any particular grammarian or text-book shall be followed, but rules, definitions, parsing, and corrections must be in accordance with good usage and common sense. The examination may be written or oral, or both written and oral.

*Geography.*—Candidates will be required to pass a satisfactory examination, written or oral, or both, in geography, particularly of our own country. To give a candidate a clear idea of what is required, the following synopsis is added to show the character and extent of the examination. Questions are likely to be asked involving knowledge of—

First. Definitions of the geographical circles, of latitude and longitude, of zones, and of all the natural divisions of the earth's surface, as islands, seas, capes, etc.

Second. The continental areas and grand divisions of the water of the earth's surface.

Third. The grand divisions of the land—the large bodies of water which in part or wholly surround them.

Their principal mountains—location, direction, and extent.

The capes—from what parts they project and into what waters.

Their principal peninsulas—location, and by what waters are they embraced.

The parts connected by an isthmus, if any.

Their principal islands—location and surrounding waters.

The seas, gulfs, and bays—the coasts they indent and the waters to which they are subordinate.

The straits—the lands they separate and the waters they connect.

Their principal rivers—their sources, directions of flow, and the waters into which they empty.

Their principal lakes—location and extent.

Fourth. The political divisions of the grand divisions—their names, locations, boundaries, and capitals.

General questions of the same character as indicated in the second section, made applicable to each of the countries of each of the grand divisions.

Fifth. The United States.

The candidate should be thoroughly informed as to its general features, configu-

the National Government; that I will maintain and defend the sovereignty of the United States, paramount to any and all allegiance, sovereignty, or fealty I may owe to any State, county, or country whatsoever; and that I will at all times obey the legal orders of my superior officers, and the rules and articles governing the armies of the United States."

And any cadet or candidate for admission who shall refuse to take this oath shall be dismissed from the service.<sup>1</sup>

ration, location, and boundaries (both with respect to neighboring countries and latitude and longitude); its adjacent oceans, seas, bays, gulfs, sounds, straits, and islands; its mountain ranges, their location and extent; the sources, directions, and terminations of the important rivers and their principal tributaries; the lakes, and in short every geographical feature of the country as indicated above. The location and termination of important railroad lines and other means of communication from one part of the country to another should not be omitted.

The States and Territories are to be accurately located with respect to each other by their boundaries, and as to their order along the Atlantic coast, the Gulf of Mexico, the Pacific coast, the northern frontier, the Mexican frontier, and the Mississippi, Missouri, and Ohio rivers.

The boundary and other large rivers of each State, as well as all other prominent geographical features, should be known.

The names and locations of their capitals and other important cities and towns are likewise to be known.

In short, the knowledge should be so complete that a clear mental picture of the whole or any part of the United States is impressed on the mind of the candidate. More weight is attached to a knowledge of the geography of the United States than to that of all other countries combined.

*History.*—The candidate should make himself familiar with so much of the history of the United States as is contained in the ordinary school histories. The examination may be written or oral, or partly written and partly oral, and will usually consist of a series of questions similar to the following:

1. Name the earliest European settlements within the present limits of the United States—when, where, and by whom made. When did the settlements made by other nations than the English come under the dominion of Great Britain and of the United States?

2. What was the difference between the royal, the chartered, and the proprietary colonies? How many colonies were there originally in Massachusetts and Connecticut? When were they united? How many in Pennsylvania? When were they separated?

3. In what wars were the colonies engaged before the Revolution? What were the principal events and results of those of King William, Queen Anne, King George, and the French and Indian?

4. What were the remote and the immediate causes of the American Revolution? Explain the navigation act, stamp act, writs of assistance. When did the war of the Revolution properly begin? When, where, and how did it end? Give the particulars of Arnold's treason. Who were the most prominent generals in this war? Name the most important battles and their results.

5. The Constitution of the United States—why and when was it formed? When was it adopted?

6. Give the names of the Presidents of the United States in their order. Give the leading events of the Administration of each one; for example, that of—

Washington: Indian war; trouble with France; Jay's treaty; the whisky rebellion, etc.

Jefferson: War with Tripoli; purchase of Louisiana; the embargo, etc.

Madison: War of 1812; its causes; the principal battles on land and sea; peculiarity of its last battle; when ended, etc.

Monroe: Indian war; cession of Florida; Missouri compromise, etc.

Jackson: Black Hawk and Seminole wars; the United States Bank; nullification, etc.

Polk: The Mexican war; its causes; principal battles; results of it, etc.

Pierce: Repeal of Missouri compromise; troubles in Kansas, etc.

Buchanan: Civil war; how begun, etc.

Lincoln: War of the rebellion; its causes; its results, social and political; explain doctrine of State sovereignty; alienation between Northern and Southern States; doctrine of secession; give account of principal battles.

Johnson: Fourteenth amendment; tenure of office bill; Johnson's impeachment.

Grant: Fifteenth amendment; Alabama claims and Treaty of Washington; Electoral Commission.

<sup>1</sup>A person appointed to a position in the Army, either as a cadet or an officer, becomes a cadet or officer de facto when he accepts the appointment; but, in view of the act of July 2, 1862 (12 Stat. L., 502), his pay can not commence until he takes the oath of office. When a candidate passes the examinations and enters upon the duties of a cadet, he thereby accepts his appointment, and his service in the Army begins for all purposes of longevity, but his pay can not commence until he takes the oath of office required by law. (3 Dig. Comp. Dec., 231.) The requirements of section 1310, of the Revised Statutes, that "no person who has served in any capacity in the military or naval service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion shall be appointed a cadet," were repealed by the act of March 31, 1896 (29 Stat. L., 84).



Engagement for service.

**1108.** Each cadet shall sign articles, with the consent of his parents or guardian if he be a minor, and if any he have, by which he shall engage to serve eight years unless

**Sec. 1321, R. S.** sooner discharged.

Pay of cadets.

**1109.** Hereafter no cadet shall receive more than at the rate of five hundred and forty dollars a year.<sup>1</sup>

June 30, 1882, v. 22, p. 123; Mar. 1, 1893, v. 27, p. 515. **Sec. 1339, R. S.**

Graduates to be commissioned, if competent, in any arm or corps in which vacancy exists.

To be additional second lieutenants if no vacancy exists.

May 17, 1886, v. 24, p. 50.

**1110.** That when any cadet of the United States Military Academy has gone through all its classes and received a regular diploma from the academic staff, he may be promoted and commissioned as a second lieutenant in any arm or corps of the Army in which there may be a vacancy and the duties of which he may have been judged competent to perform; and in case there shall not at the time be a vacancy in such arm or corps, he may, at the discretion of the President, be promoted and commissioned in it as an additional second lieutenant, with the usual pay and allowances of a second lieutenant, until a vacancy shall happen.<sup>2</sup> *Act of May 17, 1886 (24 Stat. L., 50).*

But one supernumerary officer to be attached to each company.

Apr. 29, 1812, v. 2, p. 721; Aug. 4, 1854, v. 10, p. 575.

To receive pay from date of graduation.

Dec. 20, 1886, v. 24, p. 351.

**1111.** Only one supernumerary officer shall be attached to any company at the same time under the provisions of the preceding section.

**Sec. 1215, R. S.**

**1112.** That every cadet who has heretofore graduated or may hereafter graduate at the West Point Military Academy, and who has been or may hereafter be commissioned a second lieutenant in the Army of the United States, under the laws appointing such graduates to the Army, shall be allowed full pay as second lieutenant from the date of his graduation to the date of his acceptance of and qualification under his commission and during his graduation leave, in accordance with the uniform practice which has prevailed since the establishment of the Military Academy. *Act of December 20, 1886 (24 Stat. L., 351).*

Cadet battalion.

Apr. 29, 1812, v. 2, p. 721; July 13, 1866, v. 17, s. 6, v. 14, p. 92.

**Sec. 1322, R. S.**

**1113.** The corps of cadets shall be arranged into companies, according to the directions of the superintendent, each of which shall be commanded by an officer of the

<sup>1</sup> A person appointed to a position in the Army, either as a cadet or an officer, becomes a cadet or officer de facto when he accepts the appointment; but, in view of the act of July 2, 1862 (12 Stat. L., 502), his pay can not commence until he takes the oath of office. When a candidate passes the examinations and enters upon the duties of a cadet, he thereby accepts his appointment, and his service in the Army begins for all purposes of longevity, but his pay can not commence until he takes the oath of office required by law. (3 Dig. Compt. Dec., 231.) The requirements of section 1310, of the Revised Statutes, that "no person who has served in any capacity in the military or naval service of the so-called Confederate States, or of either of the States in insurrection during the late rebellion shall be appointed a cadet," were repealed by the act of March 31, 1896 (29 Stat. L., 84).

<sup>2</sup> The requirement of section 3 of the act of June 18, 1878 (20 Stat. L., 150), "That hereafter all vacancies in the grade of second lieutenant shall be filled by appointment from the graduates of the Military Academy so long as any such remain in service unassigned; and any vacancies thereafter remaining shall be filled by promotion of meritorious non-commissioned officers of the Army, recommended under the provisions of the next section of this act: *Provided*, That all vacancies remaining, after exhausting the two classes named, may be filled by appointment of persons in civil life," was repealed by section 5 of the act of July 30, 1892 (27 Stat. L., 336). See chapter entitled COMMISSIONED OFFICERS.

Army, for the purpose of military instruction. To each company shall be added four musicians. The corps shall be taught and trained in all the duties of a private soldier, non-commissioned officer, and officer, shall be encamped at least three months in each year, and shall be taught and trained in all the duties incident to a regular camp.

1114. Cadets shall be subject at all times to do duty in such places and on such service as the President may direct. Where to do duty.  
Mar. 16, 1802, c. 9, s. 27, v. 2, p. 137.  
Sec. 1323, R. S.

1115. The Secretary of War shall so arrange the course of studies at the Academy, that the cadets shall not be required to pursue their studies on Sunday. No studies on Sunday.  
July 15, 1870, c. 294, s. 21, v. 16, p. 319.  
Sec. 1324, R. S.

1116. No cadet who is reported as deficient, in either conduct or studies, and recommended to be discharged from the Academy, shall, unless upon recommendation of the academic board, be returned or re-appointed, or appointed to any place in the Army before his class shall have left the Academy and received their commissions.<sup>1</sup> Deficient cadets.  
Aug. 3, 1861, c. 42, s. 8, v. 12, p. 288.  
Sec. 1325, R. S.

1117. Hereafter any cadet dismissed for hazing shall not be eligible to reappointment.<sup>2</sup> *Act of March 31, 1884 (23 Stat. L., 7).* Hazing; penalty.  
Mar. 31, 1884, v. 23, p. 7.

#### COURTS-MARTIAL.

1118. The superintendent of the Military Academy shall have power to convene general courts martial for the trial of cadets, and to execute the sentences of such courts, except the sentences of suspension and dismissal, subject to the same limitations and conditions now existing as to other general courts-martial.<sup>3</sup> Courts-martial for trial of cadets.  
Mar. 3, 1873, c. 270, v. 17, p. 604.  
Sec. 1326, R. S.

<sup>1</sup>Where a cadet was, by order of the Secretary of War, on the recommendation of the Academic Board, discharged from the Military Academy for deficiency in studies: *Held*, (1) that the order of discharge, having been completely executed, is beyond the power of revocation; (2) that section 1325, Revised Statutes, prohibits the returning or reappointing of the cadet to the Academy, except upon the recommendation of the Academic Board; (3) that Congress may thus limit or restrict the authority of the President to appoint cadets; (4) that accordingly it is not competent for the President to revoke the said order or to restore the cadet to the Academy, irrespective of the recommendation of the Academic Board. (17 Opin. Att. Gen., 67.)

<sup>2</sup>In a case arising at the Naval Academy, under the act of June 23, 1874, it was held by the Attorney-General (18 Opin. Att. Gen., 292) that the offense of hazing, not being an offense at the common law, and not being defined by statute, the definition of the offense must be gleaned from the rules and regulations of the Naval Academy that were in force at the date of the passage of the act in question. It was also held "that, to constitute the offense of hazing under the statute, it is essential that the victim of the maltreatment should be a new cadet of the fourth class."

Where a cadet entered the Naval Academy and became a member of the fourth class in 1885, and also remained a member of the same class in 1886, he is at the latter period as much an "older cadet" within the definition of the offense of "hazing" as a cadet who, having entered the Academy at the same time (1885), has since been advanced to a higher class, and (equally with the latter) is capable of committing that offense. (18 Opin. Att. Gen., 507.)

<sup>3</sup>The undergraduate cadets are not commissioned officers, and are, therefore, not competent to sit on a court-martial, and are triable by a regimental or garrison court-martial. (7 Opin. Att. Gen., 323.) In their internal academic organization as officers, noncommissioned officers, and privates, they are not subject to the Articles of War as respects their relation to one another, but only as respects their relation to commissioned officers of the Army, on duty as such at the Academy. (Ibid.)

Cadets are amenable to trial by court-martial for violations of the regulations of the Academy, as "conduct to the prejudice of good order and military discipline." (Dig. J. A. Gen., 210, par. 8.)

#### ACADEMIC REGULATIONS.

The regulations of the Military Academy may be altered by the Secretary of War with the approbation of the President. (1 Opin. Att. Gen., 469.)

## THE BOARD OF VISITORS.

Board of visitors.

Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Mar. 16, 1868, c. 30, s. 1, v. 15, p. 42; Feb. 21, 1870, c. 18, v. 16, p. 67.

Sec. 1327, R. S.

**1119.** There shall be appointed every year, in the following manner, a board of visitors, to attend the annual examination of the Academy: Seven persons shall be appointed by the President, and two Senators and three members of the House of Representatives shall be designated as visitors, by the Vice-President, or President pro tempore of the Senate, and the Speaker of the House of Representatives, respectively, at the session of Congress next preceding such examination.

Duties of visitors.

Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Feb. 21, 1870, c. 18, v. 16, p. 67.

Sec. 1328, R. S.

**1120.** It shall be the duty of the board of visitors to inquire into the actual state of the discipline, instruction, police administration, fiscal affairs, and other concerns of the Academy. The visitors appointed by the President shall report thereon to the Secretary of War, for the information of Congress, at the commencement of the session next succeeding such examination, and the Senators and Representatives designated as visitors shall report to Congress, within twenty days after the meeting of the session next succeeding the time of their appointment, their action as such visitors, with their views and recommendations concerning the Academy.

Compensation. Aug. 8, 1848, c. 96, s. 2, v. 9, p. 71; Feb. 21, 1870, c. 18, v. 16, p. 67; Mar. 3, 1877, c. 109, v. 19, p. 382.

Sec. 1329, R. S.

**1121.** No compensation shall be made to the members of said board beyond the payment of their expenses<sup>1</sup> for board and lodging while at the Academy, and an allowance, not exceeding eight cents a mile, for traveling by the shortest mail-route from their respective homes to the Academy, and thence to their homes.<sup>2</sup>

Compensation. June 11, 1878, v. 20, p. 110.

**1122.** Hereafter the expenses allowed by section thirteen hundred and twenty-nine of the Revised Statutes shall be paid as follows: each member of the Board of Visitors shall receive not exceeding eight cents per mile for each mile traveled by the most direct route from his residence to West Point and return, and shall in addition receive five dollars per day for expenses during each day of his service at West Point.<sup>2</sup> *Act of June 11, 1878 (20 Stat. L., 110).*

## MISCELLANEOUS PROVISIONS.

Leaves of absence.

July 2, 1864, Res. 67, v. 13, p. 416.

Sec. 1330, R. S.

**1123.** Leave of absence may be granted by the superintendent, under regulations prescribed by the Secretary of War, to the professors, assistant professors, instructors,

<sup>1</sup> The amount payable under this paragraph for expenses is, by the act of June 11 1878 (par. 1122. post), limited to \$5 per day.

<sup>2</sup> Under section 1339 of the Revised Statutes, as amended by the acts of March 3, 1877 (19 Stat. L., 382), and June 11, 1878 (20 Stat. L., 110), the mileage of the Board of Visitors must be computed by "the most direct route" from their respective homes to West Point and return, and not by the "shortest mail route." (3 Dig. Compt. Dec., 216.)

and other officers of the Academy, for the entire period of the suspension of the ordinary academic studies, without deduction from pay or allowances.

1124. The Secretary of the Senate shall furnish annually to the library of the Academy one copy of each document published, during the preceding year, by the Senate.

Congressional documents to library.  
Apr. 23, 1856, c. 19, s. 3, v. 11, p. 5.  
Sec. 1332, R.S.  
Government publications.  
Sec. 98, Jan. 12, 1895, v. 28, p. 624.

1125. The libraries of the eight Executive Departments, of the United States Military Academy, and United States Naval Academy are hereby constituted designated depositories of Government publications, and the superintendent of documents shall supply one copy of said publications, in the same form as supplied to other depositories, to each of said libraries. *Sec. 98, act of January 12, 1895 (28 Stat. L., 624).*

1126. For increase and expense of the library, namely: For periodicals, stationery, binding books, and scientific, historical, biographical, and general literature, to be purchased in open market on the written order of the Superintendent, [two thousand dollars].<sup>1</sup> *Act of March 6, 1896 (29 Stat. L., 52).*

Purchases for library.  
Mar. 6, 1896, v. 29, p. 52.

1127. That all technical and scientific supplies for the departments of instruction of the Military Academy shall be purchased by contract or otherwise, as the Secretary of War may deem best.<sup>1</sup> *Act of March 6, 1896 (29 Stat. L., 52).*

Purchases of scientific and technical supplies.  
Mar. 6, 1896, v. 29, p. 52.

<sup>1</sup>The annual acts of appropriation since that of May 1, 1888 (25 Stat. L., 112) have contained this provision.

#### CLERKS AND EMPLOYEES.

The employment of clerical and other services is regulated by the annual acts of appropriation. That of March 6, 1896, contains provision—

- For pay of the master of the sword, one thousand five hundred dollars; (a)
- For pay of one teacher of music, one thousand and eighty dollars; (a)
- For clerk to the disbursing officer and quartermaster, one thousand five hundred dollars;
- For clerk to adjutant in charge of cadet records, one thousand five hundred dollars;
- For one clerk to the adjutant, one thousand dollars;
- For clerk to treasurer, one thousand five hundred dollars;
- For one clerk to the quartermaster, one thousand dollars;
- For pay of librarian's assistant, one thousand two hundred dollars;
- For pay of one superintendent of gas works, one thousand five hundred dollars;
- For pay of engineer of heating and ventilating apparatus for the academic building, the cadet barracks and office building, cadet hospital, chapel, and philosophical building, including the library, one thousand five hundred dollars;
- For pay of assistant engineer of same, one thousand dollars;
- For pay of eight firemen, four thousand eight hundred dollars;
- For pay of one draftsman in department of civil and military engineering, one thousand dollars;
- For pay of mechanic employed in chemical and geological section rooms and in lecture rooms, one thousand dollars;
- For pay of mechanic assistant in department of natural and experimental philosophy, one thousand dollars;
- For pay of custodian of new Academy building, one thousand dollars;
- For pay of one electrician, nine hundred dollars;
- For pay of one civilian plumber, nine hundred dollars;
- For pay of one scavenger, at sixty dollars a month, seven hundred and twenty dollars;
- For compensation of chapel organist, two hundred dollars;
- In all, for civilians employed at the Military Academy, twenty-five thousand eight hundred dollars.

<sup>a</sup> This salary is fixed by law. See paragraph 1101, supra.

Contingencies of superintendent.

Mar. 6, 1896, v. 29, p. 49.

Contingent fund.

May 1, 1888, v. 25, p. 112; Mar. 21, 1893, v. 27, p. 520.

**1128.** For contingencies for Superintendent of the Academy, one thousand dollars.<sup>1</sup> *Act of March 6, 1896* (29 *Stat. L.*, 49).

**1129.** That all funds arising from the rent of the hotel on Academy grounds, and other incidental sources, from and after this date be, and are hereby, made a special contingent fund, to be expended under the supervision of the Superintendent of the Academy, and that he be required to account for the same, annually, accompanied by proper vouchers to the Secretary of War. *Act of May 1, 1888* (25 *Stat. L.*, 112). *Provided*, That all proceeds of the sale of gas shall be paid into the post fund. *Act of March 1, 1893* (27 *Stat. L.*, 520).

#### MILITARY ACADEMY BAND.

Military Academy band.

Sec. 1111, R. S.

**1130.** There shall be retained or enlisted in the Army one band, which shall consist of one band leader, and not more than twenty-four musicians, and shall ordinarily be stationed at the Military Academy.

Pay of leader.

June 20, 1864, c. 145, s. 1, v. 13, p. 144. Sec. 3; Mar. 3, 1877, v. 19, p. 380.

**1131.** The leader of the band stationed at the Military Academy shall receive ninety dollars a month.<sup>2</sup>

Sec. 1278, R. S.

Composition of band.

Sec. 2, Mar. 3, 1877, v. 19, p. 380.

**1132.** That the Military Academy band shall consist of one teacher of music, who shall be leader of the band, for the fiscal year ending June thirtieth, eighteen hundred and seventy-eight, and may be a civilian, and of twenty-four enlisted musicians of the band. *Sec. 2, act of March 3, 1877* (19 *Stat. L.*, 380).

Pay of band.

Sec. 3, Mar. 3, 1877, v. 19, p. 380.

**1133.** That the teacher of music shall receive ninety dollars per month,<sup>3</sup> one ration, and the allowance of fuel of a second lieutenant of the Army; and that of the enlisted musicians of the band six shall each be paid thirty-four

<sup>1</sup> Any appropriation for contingencies for the Superintendent of the Military Academy is available for such casual expenses as are necessary, or at least appropriate and convenient, in order to the performance of the duties required by law of the Superintendent. \* \* \* The certificate of the Superintendent, as to the correctness and justness of expenditures from the appropriation for contingencies for said Superintendent may be accepted in the adjustment and settlement of Military Academy accounts. (3 Dig. Compt. Dec., 216.) This provision has been repeated in the annual appropriation acts from that of February 2, 1869, to that of March 6, 1886, with the exception of those from August 7, 1876, to January 27, 1881.

Expenditures for the support of the Military Academy must be limited to the amounts appropriated in the acts for the support of the Academy, unless a contrary purpose on the part of Congress clearly appears in its legislation. (3 Dig. Compt. Dec., 216.)

Necessary expenses at the military post of West Point, independent of its relation to the Military Academy, not provided for in express terms, or by necessary implication, in the acts making appropriations for the support of the Military Academy, are properly chargeable to the appropriation available for like expenses at other military posts. (3 *Ibid.*, 216.)

An appropriation for contingencies for the Superintendent of the Military Academy is an appropriation for purposes of a contingent character; that is, such as might or might not happen, and which Congress could not easily foresee, and therefore could not provide for definitely. (3 *Ibid.*, 216.)

<sup>2</sup> But see paragraph 1133, post, for other allowances of this officer.

<sup>3</sup> The annual acts of appropriation, since that of February 18, 1871 (16 *Stat. L.*, 414) have contained provisions for the compensation of the chapel organist, at the rate of \$200 per annum.

dollars per month; six shall each be paid twenty dollars per month; and the remaining twelve shall each be paid seventeen dollars per month; and that the enlisted musicians of the band shall have the benefits as to pay arising from re-enlistments and length of service applicable to other enlisted men of the Army. *Sec. 3, ibid.*

#### GENERAL ARMY SERVICE MEN, QUARTERMASTER'S DEPARTMENT.

1134. That the enlisted men known as the artillery detachment at West Point shall be mustered out of the service as artillery men and immediately re-enlisted as Army service men in the Quartermaster's Department, continuing to perform the same duties and to have the same pay, allowances, rights and privileges, and subject to the rules, regulations and laws in the same manner as if their service had been continuous in the artillery, and their said service shall be considered and declared to be continuous in the Army. *Act of June 20, 1890 (26 Stat. L., 167).*

General Army service men, etc.  
June 20, 1890, v. 26, p. 167.

1135. That the detachments of enlisted men at the Military Academy, heretofore designated as the General Army Service, Quartermaster's Department, and the cavalry detachment, shall be fixed at such numbers, not exceeding two hundred and fifteen enlisted men in both detachments, as in the opinion of the Secretary of War the necessities of the public service may from time to time require; but the number of enlisted men of the Army shall not be increased on account of this proviso or the two preceding paragraphs of this Act.<sup>1</sup> *Act of June 16, 1895 (28 Stat. L., 628).*

Limit of strength.  
Jan. 16, 1895, v. 28, p. 628.

1136. The non-commissioned officer in charge of mechanics and other labor at the Military Academy, the soldier acting as clerk in the adjutant's office, and the four enlisted men in the philosophical and chemical departments and lithographic office, shall receive fifty dollars a year additional pay.<sup>2</sup>

Pay of certain enlisted men.  
Apr. 23, 1856, c. 19, s. 2, v. 11, p. 5.  
Sec. 1341, U. S.

1137. That the nature of alcoholic drinks and narcotics, and special instruction as to their effects upon the human system, in connection with the several divisions of the subject of physiology and hygiene, shall be included in the

Study of effects of alcoholic drinks and narcotics.  
May 20, 1886, v. 24, p. 69.

<sup>1</sup>The act of July 20, 1894 (28 Stat. L., 155), conferred authority upon the Secretary of War to increase the strength of this detachment to one hundred and fifty men. The act of March 6, 1896 (29 Stat. L., 48), fixes the strength of the cavalry detachment as follows: One first-sergeant, five sergeants, four corporals, two farriers, one saddler, one wagoner, and fifty-two privates.

<sup>2</sup>The act of March 6, 1896 (29 Stat. L., 48), contains an appropriation for the payment of extra-duty pay to seventeen enlisted men with the proviso that none of the money so appropriated shall be paid to any enlisted man who receives extra-duty pay under existing laws or Army Regulations. The acts of June 20, 1890 (26 Stat. L., 167), March 2, 1891 (26 Stat. L., 820), July 14, 1892 (27 Stat. L., 171), March 1, 1893 (27 Stat. L., 520), July 26, 1894 (28 Stat. L., 155), and January 16, 1895 (28 Stat. L., 631), contain similar restrictions.

branches of study taught in the common or public schools, and in the Military and Naval Schools, and shall be studied and taught as thoroughly and in the same manner as other like required branches are in said schools, by the use of text-books in the hands of pupils where other branches are thus studied in said schools, and by all pupils in all said schools throughout the Territories, in the Military and Naval Academies of the United States, and in the District of Columbia, and in all Indian and colored schools in the Territories of the United States. *Act of May 20, 1886 (24 Stat. L., 69).*

Enforcement.  
Sec. 2, May 20,  
1886, v. 24, p. 69

**1138.** That it shall be the duty of the proper officers in control of any school described in the foregoing section to enforce the provisions of this act; and any such officer, school director, committee, superintendent, or teacher who shall refuse or neglect to comply with the requirements of this act, or shall neglect or fail to make proper provisions for the instruction required and in the manner specified by the first section of this act, for all pupils in each and every school under his jurisdiction, shall be removed from office, and the vacancy filled as in other cases. *Sec. 2, act of May 20, 1886 (24 Stat. L., 69).*

#### THE CULLUM BEQUEST.

Preamble.

**1139.** Whereas George W. Cullum, colonel of the Corps of Engineers on the retired list, brevet major-general United States Army, a resident of the city of New York, lately deceased, did, by his last will and testament, give and bequeath to the United States the sum of two hundred and fifty thousand dollars upon the terms and conditions that the United States shall build and maintain, in accordance with certain stipulations, upon the public grounds at West Point, New York, a fire-proof memorial hall for certain designated purposes hereinafter specified: Therefore,

Military Academy.

Acceptance of bequest by Gen. G. W. Cullum for memorial hall.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the said bequest be, and the same hereby is, accepted by the United States under the terms and conditions thereto annexed by the said testator in his said last will and testament; the said sum of two hundred and fifty thousand dollars to be paid into the Treasury of the United States, subject to the disposition hereinafter to be made of the same and for the faithful execution of the objects and purposes of said bequest according to the will of the donor.

SEC. 2. That the Superintendent of the United States <sup>Board of trustees.</sup> Military Academy, three other members of the academic board, and Major-General James B. Fry, during his lifetime, be, and they are, constituted a board, by the name of "The Board of Trustees of the Memorial Hall of the United States Military Academy," whose duty it shall be <sup>Duties.</sup> to erect the said memorial hall according to the provisions of the will of the testator, and on completion thereof to transfer the same to the United States for perpetual use as a memorial hall, to be devoted to the objects and purposes as defined in the said will. And the members of the said board of trustees, to be selected as aforesaid, shall be appointed, immediately upon the passage of this act, by the Secretary of War, from members of the academic board of the said academy who are graduates thereof. And in the event of any vacancy occurring in the said <sup>Vacancies.</sup> board of trustees, either by the death or inability to serve of Major-General James B. Fry, or by the death or vacation of office of any member thereof who was appointed by selection from the members of the said academic board, the Secretary of War shall in each case, and from time to time as often as vacancies occur, fill such vacancy by the appointment of a member of the said academic board, who shall be a graduate of the said Military Academy, in the same manner as provided for the original appointments.

SEC. 3. That when the said sum of two hundred and fifty thousand dollars shall have been paid into the Treasury of the United States the whole sum shall be, and hereby is, appropriated for the erection of a suitable structure for the purposes of a memorial hall at West Point, New York, upon such site at West Point, New York, as the board of trustees herein created shall recommend and the Secretary of War approve. <sup>Erection of building.</sup>

SEC. 4. That the said board of trustees shall, as soon as practicable after the funds appropriated for building purposes in the preceding section shall have become available, determine, by a majority of the whole number of its members, upon a plan and specifications for a building to be erected corresponding to and in accordance with the terms and conditions of the aforesaid bequest, and submit the same to the Secretary of War for his approval, who on <sup>Plans to be submitted by board of trustees.</sup> behalf of the United States shall then cause a contract to be let, in the same manner as other contracts to which the United States is a party, for the erection of said building, under the direction of the said board of trustees. <sup>Approval by Secretary of War.</sup>



Use of funds.

**SEC. 5.** That the funds appropriated in this act shall be drawn from the Treasury as required by section thirty-six hundred and seventy-three, Revised Statutes of the United States, in the case of moneys appropriated for the use of the War Department. And the said board of trustees shall submit to the Secretary of War estimates for his approval, which shall form the basis of his requisition. The funds so drawn shall be disbursed, under the direction of the Secretary of War, by the disbursing officer of the United States Military Academy, upon vouchers certified to by the president and secretary of the said board of trustees for and in behalf of said board, and shall be accounted for by the said disbursing officer in the same manner and under the same conditions as other public funds of the United States: *Provided*, That the authority of the Secretary of War for any expenditure under the provisions of this act shall be conclusive evidence of the legality thereof. *Sections 1-5, act of July 23, 1892 (27 Stat. L., 262).*

*Proviso.*  
Approval of  
Secretary of War  
final.

Secs. 1-5, July  
23, 1892, v. 27, p.  
262.

Purpose of the  
memorial hall.  
Sec. 6, *ibid.*

**1140.** That the memorial hall to be erected under the provisions of this act shall be a receptacle of statues, busts, mural tablets, and portraits of distinguished and deceased officers and graduates of the Military Academy, of paintings of battle scenes, trophies of war, and such other objects as may tend to give elevation to the military profession; and to prevent the introduction of unworthy subjects into this hall the selection of each shall be made by not less than two-thirds of the members of the entire academic board of the United States Military Academy, the vote being taken by ayes and nays and to be so recorded. *Sec. 6, ibid.*

#### THE SERVICE SCHOOLS.

Par.  
**1141.** The Engineer Depot at Willets Point, N. Y.  
**1142.** The Artillery School at Fortress Monroe, Va.

Par.  
**1143.** The Infantry and Cavalry School at Fort Leavenworth, Kans.  
**1144.** The Cavalry and Light Artillery School at Fort Riley, Kans.

#### THE ENGINEER DEPOT AT WILLETS POINT, N. Y.

The Engineer  
Depot at Willets  
Point, N. Y.  
Sept. 22, 1888,  
v. 25, p. 487.

**1141.** Engineer depot at Willet's Point, New York: Incidental expenses of the depot: For purchase of materials for the instruction of engineer troops at Willets' Point in their special duties of sappers, miners, for land and submarine mines, and pontoneers, torpedo drill and signaling, one

thousand five hundred dollars; library of the Engineer School of Application: purchase and binding of professional works of recent date treating of military and civil engineering, five hundred dollars; in all, fifteen thousand five hundred dollars.<sup>1</sup> *Act of September 22, 1888 (25 Stat. L., 487).*

THE ARTILLERY SCHOOL AT FORTRESS MONROE, VA.

1142. To provide for means of instruction, such as text-books, instruments, drawing materials, and stationery required in the courses of artillery, engineering, law, and the science and art of war, and for other necessary expenses of the school, five thousand dollars.<sup>2</sup> *Act of June 11, 1896 (29 Stat. L., 444).*

The Artillery School at Fortress Monroe, Va. June 11, 1896, v. 29, p. 444

THE INFANTRY AND CAVALRY SCHOOL AT FORT LEAVENWORTH, KANS.

1143. For text-books, books of reference, instruments and materials for use in theoretical and practical instruction, one thousand five hundred dollars.<sup>3</sup> *Act of June 11, 1896 (29 Stat. L., 444).*

The Infantry and Cavalry School at Fort Leavenworth, Kans. June 11, 1896, v. 29, p. 444.

THE CAVALRY AND LIGHT ARTILLERY SCHOOL AT FORT RILEY, KANS.

1144. That the Secretary of War be, and he is hereby, authorized and directed to establish upon the military reservation at Fort Riley a permanent school of instruction for drill and practice for the cavalry and light artillery service of the Army of the United States, and which shall be the depot to which all recruits for such service shall be

School of Cavalry and Light Artillery Instruction established at Fort Riley, Kans. Jan. 29, 1887, v. 24, p. 372.

<sup>1</sup>The engineer depot was established by executive order, but has been recognized in the several acts of appropriation. See acts of March 3, 1871 (16 Stat. L., 523); March 3, 1873 (17 Stat. L., 546); June 16, 1874 (18 Stat. L., 74); July 24, 1876 (19 Stat. L., 100); March 3, 1878 (20 Stat. L., 32); March 3, 1879 (ibid., 467); May 4, 1880 (21 Stat. L., 13); February 24, 1881 (ibid., 349); June 30, 1882 (22 Stat. L., 121); March 3, 1883 (ibid., 459); July 5, 1884 (23 Stat. L., 112); March 3, 1885 (ibid., 434); June 30, 1886 (24 Stat. L., 98); February 9, 1887 (ibid., 400); September 22, 1888 (25 Stat. L., 487); March 2, 1889 (ibid., 832); June 13, 1890 (26 Stat. L., 155); February 24, 1891 (ibid., 778); July 16, 1892 (27 Stat. L., 181); February 29, 1893 (ibid., 485); August 6, 1894 (28 Stat. L., 241); February 12, 1895 (ibid., 662), and March 16, 1896 (29 Stat. L., 67).

<sup>2</sup>The Artillery School was established at Fortress Monroe, Va., in pursuance of General Orders, No. 18, Adjutant-General's Office, of April 5, 1824. It ceased to exist, in 1835, by reason of the transfer of the troops composing the school to other duties. It was reestablished by General Orders, No. 9, Adjutant-General's Office, of October 30, 1856. A code of regulations and plan of instruction was approved by the Secretary of War and published to the Army in General Orders, No. 5, Adjutant-General's Office, of May 18, 1858. The school was again discontinued at the outbreak of the war of the rebellion in 1861. It was again organized on its present foundation by General Orders, No. 99, Adjutant-General's Office, of November 13, 1867. Although not created by statute, its existence has been recognized and the courses of study pursued have been sanctioned by Congress in several acts of appropriation. See acts of June 20, 1878 (20 Stat. L., 223); March 3, 1879 (ibid., 389); March 3, 1881 (21 Stat. L., 445); August 7, 1882 (22 Stat. L., 320); March 3, 1883 (ibid., 618); July 7, 1884 (23 Stat. L., 222); March 3, 1885 (ibid., 510); August 4, 1886 (24 Stat. L., 251); October 2, 1888 (25 Stat. L., 540); March 2, 1889 (ibid., 971); August 30, 1890 (26 Stat. L., 402); March 3, 1891 (ibid., 979); August 5, 1892 (27 Stat. L., 379); March 3, 1893 (ibid., 601); August 18, 1894 (28 Stat. L., 406); Mar. 2, 1895 (ibid., 951), and June 11, 1896 (29 Stat. L., 444).

<sup>3</sup>The Infantry and Cavalry School was established at Fort Leavenworth, Kans., in pursuance of General Orders, No. 42, Adjutant-General's Office, of May 7, 1881. Although not created by statute, its existence has been recognized by Congress in several acts of appropriation. See acts of March 2, 1889 (25 Stat. L., 966); August 30, 1890 (26 Stat. L., 462); March 3, 1891 (ibid., 979); August 5, 1892 (27 Stat. L., 379); March 3, 1893 (ibid., 601); August 18, 1894 (28 Stat. L., 400); March 2, 1895 (ibid., 951), and June 11, 1896 (29 Stat. L., 444).

sent; and for the purpose of construction of such quarters, barracks, and stables as may be required to carry into effect the purposes of this act the sum of two hundred thousand dollars, or so much thereof as may be necessary, is hereby appropriated out of any money in the Treasury not otherwise appropriated.<sup>1</sup> *Act of January 29, 1887 (24 Stat. L., 372).*

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<sup>1</sup> The Cavalry and Light Artillery School was established in pursuance of the act of January 29, 1887, by General Orders, No. 17, Adjutant-General's Office, of March 14, 1882. See also in connection with this school the acts of October 2, 1888 (25 Stat. L., 534), and March 2, 1889 (*ibid.*, 966).

# CHAPTER XXXI.

## CONTRACTS AND PURCHASES.

### GENERAL PROVISIONS.

Par.	Par.
1145. Contracts for military service to be made under direction of Secretary of War.	1150. Acceptance of voluntary service prohibited; exceptions.
1146. Unauthorized contracts prohibited.	1151. Contracts and purchases, how made; advertising; public exigencies.
1147. No contract to exceed appropriation.	1152. Supplies for Executive Departments.
1148. Purchases of land.	1153. The same.
1149. Sites for buildings.	

**1145.** All purchases and contracts for supplies or services for the military and naval service shall be made by or under the direction of the chief officers of the Departments of War and of the Navy, respectively.<sup>1</sup> And all agents or

Contracts for the military service to be made under direction of Secretary of War.  
 July 16, 1798, c. 85, s. 3, v. 1, p. 610;  
 Feb. 27, 1877, c. 69, v. 19, p. 249.  
 Sec. 3714, R. S.

<sup>1</sup>Under this statute the Secretary of War is the source of all authority to make contracts or purchases in all branches of the military establishment. "Whether he makes the contracts himself, or confers the authority upon others, it is his duty to see that they are properly and faithfully executed; and if he becomes satisfied that contracts which he has made himself are being fraudulently executed, or those made by others were made in disregard of the rights of the Government, or with the intent to defraud it, or are being unfaithfully executed, it is his duty to interpose, arrest the execution, and adopt effectual measures to protect the Government against the dishonesty of subordinates." *U. S. v. Adams*, 7 Wall., 463, 477; *Parish v. U. S.*, 8 Wall., 489.

The head of an Executive Department may, when not prejudicial to the interests of the Government, or for its benefit, alter or modify the terms of a contract made under his direction, but his subordinates may not take such action without express authority from him. (2 Compt. Dec., 182.)

The laws governing the purchase of supplies for the Army are equally applicable whether the purchases are made from funds received from the sale of stores or from the regular appropriations available therefor. (3 Dig. Compt. Dec., 287.)

It is only an express contract which (in the absence of special authority from Congress) can legally be entered into by the Secretary of War, or a military officer, or can be recognized and acted upon as binding upon the United States. Claims against the United States arising upon alleged implied contract can not be entertained, but the claimants must be referred to the Court of Claims or Congress. Further, the contract, to be legally made or recognized as legal, must be in writing (a) (except only—according to the ruling in *Cobb's Case* (b) when entered into without previous advertisement by reason of the existence of a "public exigency;" see *infra*). So, in a case where the only evidence of an alleged contract of lease consisted of vouchers, setting forth accounts for rent claimed, approved by an assistant quartermaster, *held*, that there was no sufficient evidence of an express or written contract upon which payment could be authorized by the Secretary of War. (c) (Dig. Opin. J. A. Gen., 275, par. 1.)

The Secretary of War has authority to extend the time for the execution of a contract made on behalf of his Department when the interests of the Government are not thereby prejudiced, and particularly when its noncompletion within the time limited is not due to the negligence of the contractor. (2 Compt. Dec., 242; *Solomon v. U. S.*, 19 Wall., 17; *U. S. v. Corliss Steam Engine Co.*, 91 U. S., 321; 18 Opin. Att. Gen., 101; 2 Compt. Dec., 635.)

<sup>a</sup>See *Henderson v. U. S.*, 4 C. Cls. R., 75; 14 Opin. Att. Gen., 229; *Clark v. U. S.*, 95 U. S., 539.

<sup>b</sup>*Cobb v. U. S.*, 7 C. Cls. R., 470, and 9 *ibid.*, 291. And see *Thompson v. U. S.*, *ibid.*, 198.

<sup>c</sup>See 14 Opin. Att. Gen., 230.

contractors for supplies or service as aforesaid shall render their accounts for settlement to the accountant of the proper department for which such supplies or services are required, subject, nevertheless, to the inspection and revision of the officers of the Treasury in the manner before prescribed.

Unauthorized contracts prohibited.

Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220.

Sec. 3732, R. S. 1146. No contract or purchase on behalf of the United States shall be made, unless the same is authorized by law or is under an appropriation adequate to its fulfillment, except in the War and Navy Departments, for clothing, subsistence, forage, fuel, quarters, or transportation, which, however, shall not exceed the necessities of the current year.<sup>1</sup>

No contract to exceed appropriation.

July 25, 1868, c. 233, s. 3, v. 15, p. 177.

Sec. 3733, R. S. 1147. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.<sup>2</sup>

Purchases of land.

May 1, 1820, c. 52, s. 7, v. 3, p. 568.

Sites for buildings.

Mar. 3, 1875, v. 18, p. 371.

1148. No land shall be purchased on account of the United States, except under a law authorizing such purchase.<sup>3</sup>

Sec. 3736, R. S.

1149. No money shall be paid nor contracts made for payment for any site for a public building in excess of the amount specifically appropriated therefor.<sup>4</sup> *Act of March 3, 1875 (18 Stat. L., 371).*

<sup>1</sup> The restrictions of section 3732, Revised Statutes, are in the alternative, prohibiting a contract or purchase on the part of the United States unless "authorized by law" or unless such contract or purchase is made "under an appropriation adequate to its fulfillment." Contracts to be valid must be shown to come under one or the other of these provisions. *Shipman v. U. S.*, 18 C. Cls. R., 138.

When the authority to enter into a contract for a particular work in behalf of the United States depends wholly upon an appropriation of money made for that purpose, no officer of the Government has power to create a liability therefor beyond the amount of the appropriation, and a contractor can not recover more than the money appropriated, whatever may be the extent of his work. When an alleged liability rests wholly upon the authority of an appropriation, they must stand or fall together; so that when the latter is exhausted the former is at an end, to be revived, if at all, only by subsequent legislation by Congress. *Shipman v. U. S.*, 18 C. Cls. R., 138, 147; *McCullom v. U. S.*, 17 *ibid.*, 92, 103; *Trenton Co. v. U. S.*, 12 *ibid.*, 147, 157.

If an officer is clothed with authority to do a piece of work without limitation as to cost, the contracts made by him therefor are binding upon the Government, whether money is appropriated for the purpose or not. *Shipman v. U. S.*, 18 *ibid.*, 138; *Collins v. U. S.*, 15 *ibid.*, 22, 35; 13 Op. Att. Gen., 315; 15 *ibid.*, 236.

Acknowledgments and promises made by executive officers of the Government do not bind the United States when they are not made under express or implied authority of Congress. *Leonard et al. v. U. S.*, 18 C. Cls. R., 382.

<sup>2</sup> Authority to contract for the completion of an entire structure, the plan of which has been determined on, can not be inferred from the mere fact that an appropriation of a certain sum, to be expended on the structure, has been made. Hence a contract, though it be good to the extent of such appropriation, could not affix itself to future appropriations and control their expenditure. A contract of this character would be in violation of the spirit of section 3, act of July 25, 1868 (sec. 3733, R. S.), if not of its express terms. 15 Op. Att. Gen., 236.

Under section 5 of the act of June 20, 1874 (18 Stat. L., 111), all appropriations for "public buildings" are available until otherwise ordered by Congress. 3 Compt. Dec., 29. A sub-appropriation for a public building must, under the act of June 20, 1874 (18 Stat. L., 110, 111), remain available until its object has been accomplished or until it has been exhausted, unless otherwise ordered by Congress. *Ibid.*

<sup>3</sup> The act of Congress does not prohibit the acquisition by the United States of the legal title to land, without express legislative authority, when it is taken by way of security for debt. *Neilson v. Lagow*, 12 How., 98.

<sup>4</sup> See, also, for additional restrictions the act of March 3, 1875 (18 Stat. L., 371).

1150. Hereafter no Department or officer of the United States shall accept voluntary service for the Government or employ personal service in excess of that authorized by law, except in cases of sudden emergency involving the loss of human life or the destruction of property. *Act of May 1, 1884 (23 Stat. L., 17).*

Acceptance of voluntary service prohibited; exceptions. May 1, 1884, v. 23, p. 17.

1151. All purchases and contracts for supplies<sup>1</sup> or services, in any of the Departments of the Government, except for personal services, shall be made by advertising<sup>2</sup> a sufficient time previously for proposals respecting the same, when the public exigencies do not require the immediate delivery of the articles, or performance of the service. When immediate delivery or performance is required by the public exigency,<sup>3</sup> the articles or service required may be procured by open purchase or contract, at the places and in the manner in which such articles are usually bought and sold, or such services engaged, between individuals.<sup>3</sup>

Contracts and purchases, how made; advertising; public exigencies.

Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220.

Supplies for Executive Departments.

Sec. 3709, R. S.

1152. And the advertisement for such proposals shall be made by all the Executive Departments, including the Department of Labor, the United States Fish Commission, the Interstate Commerce Commission, the Smithsonian Institution, the Government Printing Office, the government of the District of Columbia, and the superintendent of the State, War, and Navy building, except for paper and materials for use of the Government Printing Office, and

Advertisements for all the Departments to be on the same day.

Sec. 1, Jan. 27, 1894, v. 28, p. 33.

R. S. Sec. 3709,

<sup>1</sup> The word "supplies," as used in section 3709 of the Revised Statutes, evidently has reference to those things which the well-known needs of the public service will from time to time require in its different branches for its successful and efficient administration, and the statute was intended to afford the Government the pecuniary benefits, as well as the protection against fraud and favoritism, which open and honest competition is always likely to secure. It could not have been in the mind of the lawmaking power to require that purchases could only be made after advertisement of small articles which may occasionally be needed, and where in many cases the cost of advertising itself would exceed the value of the article purchased. It can not be said that such cases are governed by the emergency provision in the statute, for there may be, and are, many instances where the officer could not truthfully certify that immediate delivery was necessary. (3 Dig. Compt. Dec., 288.)

<sup>2</sup> The act of March 2, 1861 (sec. 3709, R. S.), while requiring such advertisement, as the general rule invests the officer charged with the duty of procuring supplies or services with a discretion to dispense with advertising, if the exigencies of the public service require immediate delivery or performance. It is too well settled to admit of dispute at this day that, where there is a discretion of this kind conferred on an officer or board of officers, and a contract is made in which they have exercised that discretion, the validity of the contract can not be made to depend on the degree of wisdom or skill which may have accompanied its exercise. (U. S. v. Speed, 8 Wall., 77, 83; Childs v. U. S., 4 C. Cls. R., 176; Mason v. U. S., 4 C. Cls. R., 495; Wentworth v. U. S., 5 C. Cls. R., 302.) See note 3.

<sup>3</sup> Section 3709, Revised Statutes, provides, generally, that the making of public contracts for supplies, etc., shall be preceded by an advertising for proposals "when the public exigencies do not require the immediate delivery of the articles or performance of the service." Exigencies growing out of a state of war, or hostilities with Indians, were probably mainly had in view, and it is exigencies of this class which have been considered in the adjudged cases in the Supreme Court and Court of Claims. (a) It is clear, however, that other exigencies may exist requiring that contracts or purchases be made at once or without the delay incident to advertising for proposals. Thus a loss of stores, structures, etc., on hand, caused by an actus Dei

a See U. S. v. Speed, 8 Wallace, 83; Reeside v. U. S., 2 C. Cls. R., 1; Mowry v. U. S., ibid., 68; Stevens v. U. S., ibid., 95; Floyd v. U. S., ibid., 429; Crowell v. U. S., ibid., 501; Baker v. U. S., 3 ibid., 343; Henderson v. U. S., 4 ibid., 75; Childs v. U. S., ibid., 176; Wentworth v. U. S., 5 ibid., 302; Wilcox v. U. S., ibid., 386; Cobb v. U. S., 7 ibid., 471, and 9 ibid., 291; Thompson v. U. S., ibid., 187; McKee v. U. S., 12 ibid., 505.

Time for opening bids to be the same.

materials used in the work of the Bureau of Engraving and Printing, which shall continue to be advertised for and purchased as now provided by law, on the same days and shall each designate two o'clock post meridian of such days for the opening of all such proposals in each Department and other Government establishment in the city of Washington; and the Secretary of the Treasury shall designate the day or days in each year for the opening of such proposals and give due notice thereof to the other Departments and Government establishments. Such proposals shall be opened in the usual way and schedules thereof duly prepared and, together with the statement of the proposed action of each Department and Government establishment thereon, shall

or vis major, as fire, storm, freshet, or a sudden riot or violent disorder; or a loss of supplies occasioned by the neglect of military subordinates in charge; or a failure of a contractor to fulfill a contract for supplies, transportation, or other service, might properly be regarded as constituting an "exigency" under the statute, if of such magnitude or injurious consequence to the Army as to necessitate an immediate making good of the deficiency. (a) The general rule, however, of the statute in requiring a notice and invitation to the public as a preliminary to the awarding of a contract, is founded upon a sound and well-considered public policy, and exceptions thereto, especially in time of peace, should be recognized as admissible only where, if the rule were strictly complied with, the public interests would manifestly be most seriously prejudiced. (b) (Dig. Opin. J. A. G., 279, par. 9.)

An exigency can not be created by the simple certificate of a public officer that it exists. An exigency involves a state of pressing necessity so great that the public interests would be prejudiced if the contemplated purchase was not made. A certificate made after the purchase of the articles is of no effect. (3 Dig. Compt. Dec., 286.) The term "public exigency" refers to an exceptional and urgent necessity requiring the immediate performance of the work or service. (Ibid., 328.)

Proof of the existence of an exigency must be presented in order to authorize the accounting officers to pass a voucher for an exigency purchase under section 3709 of the Revised Statutes. Such proof must accompany the voucher in the form of a certificate by the officer who made the purchase that a public exigency required the immediate delivery of the articles purchased, and that they were, therefore, purchased in open market. In other words, there must be proof that the proper officer has actually determined that an exigency existed. The certificate may be made in the following form: "The exigencies of the public service required the immediate delivery of the articles specified in the voucher, and they were, therefore, obtained by purchase in open market, without advertisement, and at the lowest market rates." (Ibid.)

Except in the rare case of an existing public exigency a contract for supplies in the War Department or military branch of the service is to be preceded by an advertisement for proposals as directed in section 3709, Revised Statutes. This advertisement is not a mere facility for the convenience of an executive department, which may be waived at discretion, but an essential proceeding prescribed by the statute as a condition to the exercise of the authority to enter into a contract for the United States. Thus enjoined, no omission or evasion of this prerequisite, however con-

a See G. O. 10 of 1879, secs. 22-25, pp. 14-15; do. 72, *ibid.*, p. 52; do. 40 of 1880, p. 58; also *McKee v. U. S.*, 12 C. Cls. R., 529-530.

b As to the authority who is to decide whether there exists such an exigency as is contemplated by the statute, the Supreme Court, in *United States v. Speed* (8 Wall ace, 83), has held that it is "the officer charged with the duty of procuring supplies or services who is invested with this discretion." This description is rather general, nor is the term "the purchasing officer," by which the Court of Claims explains it, in *Thompson v. U. S.*, 9 C. Cls. R., 196, a much more precise definition. It is clear, however, that a subordinate officer charged with the duty of being the immediate representative of the United States in a contract or purchase should not, in general, venture to dispense with advertising, on the theory of the existence of a public exigency, in the absence of instructions or orders from a proper superior. Nor, on the other hand, will a superior officer, in entering into a contract for his command or branch of the service, properly assume that an "exigency" exists authorizing him to dispense with the statutory forms, when the period is time of peace and no imperative necessity exists for the immediate delivery of the supplies or performance of the service proposed to be contracted for. It is to be noted that the cases both of *Speed* and *Thompson* related to contracts entered into during the late war. In the instructive opinions of the Attorney-General on the "Fifteen per cent contracts" of April 27 and May 3, 1877 (15 Opin., 235, 253), it is held that the "exigency" contemplated by the statute can be one of time only, and that it can be regarded as existing only where an immediate delivery or performance is required by a public necessity. (Dig. J. A. Gen., p. 280, note 1.)

be submitted to a board, consisting of one of the Assistant Secretaries of the Treasury and Interior Departments and one of the Assistant Postmasters-General, who shall be designated by the heads of said Departments and the Postmaster-General respectively, at a meeting to be called by the official of the Treasury Department, who shall be chairman thereof, and said board shall carefully examine and compare all the proposals so submitted and recommend the acceptance or rejection of any or all of said proposals.

Submission to  
board for approv-  
al.

venient such an omission or evasion may be, can legally be allowed. (a) So, *held* that it was no excuse for a noncompliance with the statute by a quartermaster, that his contracts (made without advertisement) had been made with the most reliable parties and to the advantage of the United States. And, *held* that the requirement as to advertising for proposals must be complied with in contracting for a supply of articles purchased for trial, equally as if the contract were for the regular yearly supplies. (Dig. Opin. J. A. G., 275, par. 2.)

The main object of the advertisement is to induce a free and open competition for the contracts of the Government, and thus to protect the United States from fraudulent combinations and collusive preferences in its business transactions. (b) At the same time the advertisement, in inviting proposals from the public, is properly to be viewed as a pledge on the part of the United States that the contract will, as a general rule, be awarded to the lowest bidder, provided he is a responsible person and his bid is a reasonable one, and provided, of course, he complies with the existing regulations as to bond, etc. (Ibid., 276, par. 3.)

A military emergency can not be measured by precise rules. *Thompson v. U. S.*, 9 C. Cls. R., 187. The act of March 2, 1861 (sec. 3709, R. S.), requires of a quartermaster that openness, diligence, prudence, and care which an individual might be supposed to exercise were he buying goods in just such an emergency and under just such circumstances. \* \* \* A statute relating to national emergencies must necessarily be construed liberally, but a case under it can form no precedent for other cases. What was right for a quartermaster to do under certain circumstances can be lawful and right only when the precise circumstances are repeated. *Childs & Co. v. U. S.*, 4 C. Cls. R., 176.

An officer charged with the duty of making a contract, or purchase, is responsible under the laws and regulations for his action. Permission or orders to make a contract or purchase without inviting competition will not justify that procedure, and will not be given. (Par. 519, A. R., 1895.)

In the absence of any emergency in fact, or any declared by the head of the Department in which a public work is being carried on, or any emergency that can be judicially inferred, the requirements of this section, in respect to advertisement, are mandatory, and a contract made in violation of it is void. (*Schneider v. U. S.*, 19 C. Cls. R., 547, 551.)

Personal services are such as the individual employed or contracted with must perform, in person, directly under the control and supervision of an officer or agent of the Government, as distinguished from services the performance of which may be delegated by the contractor to others. (Par. 518, A. R., 1895.) They are contracts for expert or skilled service to be performed by the contractor in person. (Dig. Opin. J. A. G., 281, par. 11.)

Where the essential part of a contract is for personal services, advertising for proposals under section 3709, Revised Statutes, is not required. (2 Compt. Dec., 185.)

Section 3709 does not require the advertising for proposals, nor the entering into contracts for the purchase of patented or copyrighted articles where the benefit of competition can not be secured. (2 Compt. Dec., 632.) For provisions of regulations respecting purchases, etc., see paragraphs 515-520, Army Regulations of 1895.

<sup>a</sup> See 6 Opin. Att. Gen., 406; 10 *ibid.*, 28; also opinion of the Solicitor-General of March 20, 1876 (15 Opin., 539), wherein, in holding contracts made without advertising to be not binding on the United States, he dissents from the opinion of Attorney-General Bates, in 10 Opin., 416, to the effect that while an absence of the prescribed advertisement will render illegal and inoperative an unexecuted contract, the Government can not, on account of such omission, rescind, to the damage of a contractor, a contract entered into by him in good faith and partly performed. In a later opinion of April 27, 1877 (15 Opin., 236), the Attorney-General refers to the question, whether the provision of section 3709, Revised Statutes, requiring that contracts in general shall be preceded by advertisement, is mandatory or only directory, as one which has been much discussed (see, for example, the reference to this question in *Fowler v. U. S.*, 3 C. Cls. R., 47), but is not required to be decided in that opinion. But whatever may be the true construction of this section, it is clear that no officer of the Army, in the absence of express authority to do so from the Secretary of War, can be justified in omitting to comply with the provision in regard to advertising.

<sup>b</sup> See *Harvey v. U. S.*, 8 C. Cls. R., 506. In regard to a statute (similar to section 3709), governing the Post-Office Department, the Supreme Court, in *Garfield v. U. S.*, 3 Otto, 246, say: "The object of the statute was to secure notice, \* \* \* that bidders might compete, that favoritism should be prevented, that efficiency and economy in the service should be obtained."



Readvertise-  
ment of rejected  
bids.

And if any or all of such proposals shall be rejected, advertisements for proposals shall again be invited and proceeded with in the same manner. *Sec. 1, act of January 27, 1894 (28 Stat. L., 33).*

The same.

**1153.** That the Act entitled "An Act to amend section thirty-seven hundred and nine of the Revised Statutes relating to contracts for supplies in the Departments at Washington," approved January twenty-seven, eighteen hundred and ninety-four, be, and the same is hereby, so amended that the provisions thereof shall apply only to advertisements for proposals for fuel, ice, stationery, and other miscellaneous supplies to be purchased at Washington for the use of the Executive Departments and other Government establishments therein named; and no advertisements made or contracts awarded or to be awarded thereon since January twenty-seven, eighteen hundred and ninety-four, in accordance with the laws in force prior to said date, shall be declared to be illegal or invalid for non-compliance with said law of January twenty-seventh, eighteen hundred and ninety-four. *Act of April 21, 1894 (28 Stat. L., 62).*

Provisions limited.  
Sec. 3709, R. S.

Contracts, etc.,  
not invalid.

#### ADVERTISING.

Par.  
1154. No advertising without authority.  
1155. Rates of advertising.  
1156. Proclamations, etc; advertisements in District of Columbia; limitation.  
1157. The same.  
1158. Advertising for supplies for Quartermaster's Department.  
1159. Separate proposals and contracts.

Par.  
1160. Two or more works in one contract, etc.  
1161. Secretary of War to prescribe rules, etc.; bond.  
1162. Opening bids; notification.  
1163. American material to be preferred for public improvements.  
1164. Bunting.

No advertising  
without au-  
thority.  
July 15, 1870, c.  
292, s. 2, v. 16, p.  
308.  
Sec. 3828, R. S.

**1154.** No advertisement, notice, or proposal for any Executive Department of the Government, or for any Bureau thereof, or for any office therewith connected, shall be published in any newspaper whatever, except in pursuance of a written authority for such publication from the head of such Department; and no bill for any such advertising, or publication, shall be paid, unless there be presented, with such bill, a copy of such written authority.<sup>1</sup>

<sup>1</sup> The requirements of section 3828, Revised Statutes, are complied with by the issue of a general circular of instructions, and it is not necessary to file authority with each particular bill. (Compt. Dec., 1893-94, 103; U. S. v. Odeneal, 10 Fed. Rep., 616.)

By the terms of section 3709, Revised Statutes, and the acts of July 5, 1884 (23 Stat. L., 109), and February 12, 1895 (28 Stat. L., 654), advertising is required prior

1155. That hereafter all advertisements, notices, proposals for contracts, and all forms of advertising required by law for the several departments of the government may be paid for at a price not to exceed the commercial rates charged to private individuals, with the usual discounts; such rates to be ascertained from sworn statements to be furnished by the proprietors or publishers of the newspapers proposing so to advertise: *Provided*, That all advertising in newspapers since the tenth day of April, eighteen hundred and seventy-seven, shall be audited and paid at like rates; but the heads of the several departments may secure lower terms at special rates whenever the public interest requires it. *Act of June 20, 1878 (20 Stat. L., 216).*

Rates of advertising.  
June 20, 1878,  
v. 20, p. 216.

1156. That all executive proclamations, and all treaties required by law to be published, shall be published in only one newspaper the same to be printed and published in the District of Columbia and to be designated by the Secretary of State and in no case of advertisement for contracts for the public service shall the same be published in any newspaper published and printed in the District of Columbia unless the supplies or labor covered by such advertisement are to be furnished or performed in said District of Columbia. *Act of July 31, 1876 (19 Stat. L., 105).*

Proclamations,  
etc.; advertise-  
ments in Dis-  
trict of Colum-  
bia; limitation.  
July 31, 1876, v.  
19, p. 105.

1157. That all advertising required by existing laws to be done in the District of Columbia by any of the departments of the government shall be given to one daily and one weekly newspaper of each of the two principal political

The same.  
Jan. 21, 1881, v.  
21, p. 317.  
Sec. 3828, R. S.

to purchase in the case of "all supplies for the use of the various departments and posts of the Army and all branches of the Army service," including the procurement of steel for gun construction. Advertising may be dispensed with in the emergency contemplated in section 3709 of the Revised Statutes; in the purchase of certain ordnance stores, when the aggregate of said purchase does not exceed \$200 (act of July 16, 1892, 27 Stat. L., 174), and in the purchase of medicines and medical supplies (act of February 27, 1893, 27 Stat. L., 478). See, also, notes to paragraph 1151, *ante*.

A disbursing officer is not authorized to pay bills for newspaper advertising when he is satisfied that the price exceeds the commercial rates charged to private individuals, with the usual discounts, notwithstanding the affidavit of the proprietor of the newspaper to the contrary. (1 Compt. Dec., 312.)

When the proprietors of a newspaper show by affidavit that the rates theretofore sworn to by them were, although not so limited, intended simply to cover advertising of a certain kind, they may be paid at their usual commercial rates for advertising not of the kind intended by their first statement of rates. (*Ibid.*, 373.)

When advertising in connection with the purchase of subsistence supplies for the Army is, by law, a necessary condition precedent to the purchase of such supplies, and there is no specific appropriation for such advertising, the cost thereof is properly chargeable to the appropriation "Subsistence of the Army." (3 Dig. Compt. Dec., 23.)

Under section 3709 of the Revised Statutes, and paragraph 1486 of the Army Regulations (1881), the length of time for the publication of advertisements inviting proposals for furnishing Army supplies was left somewhat to the discretion of the purchasing officer, but the act of July 5, 1884 (23 Stat. L., 109), has fixed, in all cases, excepting emergency purchases, the minimum period during which public notice shall be given, authorizing the purchase of "small amounts for immediate use" after public notice of not less than ten days, while all other purchases are required to be made after public notice of not less than thirty days. (*Ibid.*, 23.)

Under the Army Regulations, advertisement may be made by handbills, but when this method is resorted to it must be shown that the handbills were circulated to such an extent as to render it probable that a large number of persons engaged in the business of furnishing the articles desired had thus been afforded an opportunity to compete for the contract which was to be let. (*Ibid.*, 24.)

parties and to one daily and one weekly neutral newspaper: *Provided*, That the rates of compensation for such service shall in no case exceed the regular commercial rate of the newspapers selected; nor shall any advertisement be paid for unless published in accordance with section thirty-eight hundred and twenty-eight of the Revised Statutes. *Act of January 21, 1881 (21 Stat. L., 317).*

Advertisements for supplies for Quartermaster's Department.

July 13 1866, c. 176, s. 4, v. 14, p. 92.

Sec. 3716, R.S.

**1158.** The Quartermaster's Department of the Army, in obtaining supplies for the military service, shall state in all advertisements for bids for contracts that a preference shall be given to articles of domestic production and manufacture, conditions of price and quality being equal, and that such preference shall be given to articles of American production and manufacture produced on the Pacific coast, to the extent of the consumption required by the public service there. In advertising for Army supplies the Quartermaster's Department shall require all articles which are to be used in the States and Territories of the Pacific coast to be delivered and inspected at points designated in those States and Territories; and the advertisements for such supplies shall be published in newspapers of the cities of San Francisco, in California, and Portland, in Oregon.

#### BIDS AND PROPOSALS.

Separate proposals and contracts.

Sec. 3717, R.S.

**1159.** Whenever the Secretary of War invites proposals for any works, or for any material or labor for works, there shall be separate proposals and separate contracts for each work, and also for each class of material or labor for each work.<sup>1</sup>

Two or more river and harbor works in one contract, etc.

R. S., sec. 3717, modified.

V. 25, p. 423.

Sec. 2, Sept. 19, 1890, v. 26, p. 452.

**1160.** That nothing contained in section thirty-seven hundred and seventeen of the Revised Statutes of the United States, nor in section three of the river and harbor act of August eleventh, eighteen hundred and eighty-eight, shall be so construed as to prohibit or prevent the cumulation of two or more works of river and harbor improvement in the same proposal and contract, where such works are situated in the same region and of the same kind or character. *Sec. 2, act of September 19, 1890 (26 Stat. L., 452).*

Secretary of War to prescribe rules, etc.; bonds.

Apr. 10, 1878, v. 20, p. 36.

**1161.** That the Secretary of War is hereby authorized to prescribe rules and regulations to be observed in the preparation and submission and opening of bids for contracts under the War Department. *Act of April 10, 1878 (20 Stat. L., 36).*

<sup>1</sup> The subject of advertising in the War Department and its several bureaus and offices, and in the military establishment generally, is regulated by the provisions of paragraphs 520-524, Army Regulations of 1895. See note to paragraph 1154, *supra*.

And he may require every bid to be accompanied by a written guarantee, signed by one or more responsible persons, to the effect that he or they undertake that the bidder, if his bid is accepted, will, at such time as may be prescribed by the Secretary of War or the officer authorized to make a contract in the premises, give bond, with good and sufficient sureties, to furnish the supplies proposed or to perform the service required. If after the acceptance of a bid and a notification thereof to the bidder he fails within the time prescribed by the Secretary of War or other duly authorized officer to enter into a contract and furnish a bond with good and sufficient security for the proper fulfillment of its terms, the Secretary or other authorized officer shall proceed to contract with some other person to furnish the supplies or perform the service required, and shall forthwith cause the difference between the amount specified by the bidder in default in the proposal and the amount for which he may have contracted with another party to furnish the supplies or perform the service for the whole period of the proposal to be charged up against the bidder and his guarantor or guarantors, and the sum may be immediately recovered by the United States for the use of the War Department in an action of debt against either or all of such persons. *Act of March 3, 1883 (22 Stat. L., 488).*

**1162.** Whenever proposals for supplies have been solicited, the parties responding to such solicitation shall be duly notified of the time and place of opening the bids, and be permitted to be present either in person or by attorney, and a record of each bid shall then and there be made.

**1163.** That in all contracts for material for any public improvement, the Secretary of War shall give preference to American material; and all labor thereon shall be performed within the jurisdiction of the United States. *Sec. 2, act of March 3, 1875 (18 Stat. L., 455).*

**1164.** The Secretary of War, the Secretary of the Navy, and the Secretary of the Treasury may enter into contract in open market, for bunting of American manufacture, as their respective services require, for a period not exceeding one year, and at a price not exceeding that at which an article of equal quality can be imported.

Bonds.  
Mar. 3, 1883, v.  
22, p. 488.

Opening bids,  
notification.  
Jan. 31, 1868,  
Res. 8, v. 15, p.  
246.  
Sec. 3710, R. S.

American material preferred for public improvements.  
Labor on same.  
Sec. 2, Mar. 3, 1875, v. 18, p. 455.

Bunting.  
Mar. 2, 1865, c.  
74, s. 7, v. 13, p.  
467.  
Sec. 3729, R. S.

## MISCELLANEOUS PROVISIONS.

Par.	Par.
1165. Purchase of supplies, conditions of.	1172. Limit of expenditures on buildings and grounds.
1166. Purchases, where made; open market purchases not exceeding \$200.	1173. Post bakeries, schools, kitchens, gardens, etc.
1167. Cavalry and artillery horses.	1174. Post gardens and exchanges.
1168. The same; limitations on purchases.	1175. Contracts for subsistence supplies.
1169. Draught animals; limit of purchases.	1176. Purchase of medicines, etc.
1170. Purchase of means of transportation.	1177. Purchases of ordnance in open market; limitation.
1171. Transportation of stores, etc., by contract.	1178. Name of contractor to appear on supplies.

Purchase of supplies, conditions of.  
July 5, 1884, v  
23, p. 109.

1165. That hereafter all purchases of regular and miscellaneous supplies for the Army furnished by the Quartermaster's Department and by the Commissary Department for immediate use shall be made by the officers of such Department, under direction of the Secretary of War, at the places nearest the points where they are needed, the conditions of cost and quality being equal: *Provided also*, That all purchases of said supplies, except in cases of emergency, which must be at once reported to the Secretary of War for his approval, shall be made by contract after public notice of not less than ten days for small amounts for immediate use, and of not less than from thirty to sixty days whenever, in the opinion of the Secretary of War, the circumstances of the case and conditions of the service shall warrant such extension of time. The award in every case shall be made to the lowest responsible bidder for the best and most suitable article, the right being reserved to reject any and all bids.<sup>1</sup> *Act of July 5, 1884 (23 Stat. L., 109).*

<sup>1</sup> The object of this provision is to secure the Government the benefit arising from competition. It is expected that this benefit will manifest itself in the selection of the best and most suitable supplies for the least expenditure of public money. Where the prices for supplies are fixed and uniform, it is unusual and impracticable to advertise for proposals. Such cases are not within the meaning of the statute. (3 Dig. Compt. Dec., 287.) Expenditures for water and gas are not expenditures for supplies within the meaning of this act (Ibid.) So held also as to street car tickets. (Ibid., 290.)

The officers of the Quartermaster's Department are not bound to award contracts to the lowest bidder in every instance, but only to the lowest responsible bidder for the best and most suitable article, in case the right to reject "any and all bids," which the statute reserves, is not exercised. (3 Dig. Compt. Dec., 110.)

Evidence of compliance with the requirements of this statute should accompany all contracts filed in the Second Comptroller's Office. (Ibid., 108.)

Whenever an officer of the Army enters into a contract on behalf of the Government for the purchase of quartermaster's or subsistence supplies, under the authority conferred by this statute, it should be made to appear by the certificate of the officer that the supplies were required for immediate use. The officer should also certify as to the time and manner of the advertisement, and that the award was made to the lowest responsible bidder for the best and most suitable article. (Ibid., 108.)

Under the act of July 5, 1884 (23 Stat. L., 109), there are four classes of purchases of army supplies made by the Quartermaster and Subsistence Departments, namely:

1166. That after advertisement all the supplies for the use of the various departments and posts of the Army and of all branches of the Army service shall, hereafter, be purchased where the same can be purchased the cheapest, quality, cost of transportation, and the interests of the Government considered, except that purchases may be made in open market, in the manner common among business men, when the aggregate amount required does not exceed two hundred dollars, but every such purchase shall be immediately reported to the Secretary of War.<sup>1</sup> *Act of February 12, 1895 (28 Stat. L., 659).*

Purchases,  
where made.  
Feb. 12, 1895, v.  
28, p. 659.

Open market  
purchases not  
exceeding \$200.

1167. Hereafter all purchases of horses under appropriations for horses for the cavalry and artillery and for the Indian scouts shall be made by contract, after legal advertisement, by the Quartermaster's Department, under instructions of the Secretary of War, the horses to be inspected under the orders of the General commanding the Army; and no horse shall be received and paid for until duly inspected. *Act of July 5, 1884 (23 Stat. L., 109).*

Cavalry and  
artillery horses.  
July 5, 1884, v.  
23, p. 109.

1168. That the number of horses purchased under this appropriation, added to the number on hand, shall not at any time exceed the number of enlisted men and Indian scouts in the mounted service; and that no part of this appropriation shall be paid out for horses not purchased by contract, after competition duly invited by the Quartermaster's Department, and an inspection by such Depart-

Limitation on  
purchases.  
Feb. 12, 1895, v.  
28, p. 660.

First, "emergency purchases," which must be at once reported to the Secretary of War for his approval; second, purchases of "small amounts for immediate use," which must be made "by contract after public notice of not less than ten days;" third, purchases of the great bulk of army supplies, which must be made under the general rule prescribed by the Army Regulations, that is, after public notice of not less than thirty days; and fourth, unusual and important purchases, where the Secretary of War deems public notice of from thirty to sixty days advisable. (*Ibid.*, 288.)

In all cases where purchases of regular or miscellaneous supplies for the Army are made by the Quartermaster's Department or by the Subsistence Department after public notice of ten days or more, without executing formal written contracts, the vouchers therefor must be accompanied by the following evidence, namely: First, a copy of the public notice for bids; second, a certificate as to the time and manner of the public notice for bids; third, the accepted bid; fourth, a copy of the letter accepting the bid; and fifth, a certificate that the award was made to the lowest responsible bidder for the best and most suitable article. (*Ibid.*, p. 289.)

The object of this legislation is to secure for the Government the benefit of competition in obtaining supplies and to prevent favoritism in making the purchases thereof. It contemplates one general mode of purchase, namely, by contract, after advertisement, with "the lowest responsible bidder for the best and most suitable article," with but a single exception, and that is where an "emergency" exists requiring the purchase to be otherwise made. Such emergency may arise not only before the required public notice can be given, but after it has once been given, in consequence of the failure to receive any bids or proposals; in either case the purchase thereupon would be an emergency purchase, and come within the requirement of the statute for an immediate report to the Secretary of War for his approval. This requirement is, I think, designed to extend to all purchases which are not made agreeably to the general mode above indicated, and hence it applies to the purchase of parts of machinery, or parts of stoves or ranges, for repairs, or of patented articles, when the same is (as in cases of emergency, and those only, it may be) made in open market. (18 Opin. Att. Gen., 349.)

<sup>1</sup>See acts of June 30, 1886 (24 Stat. L., 96); February 9, 1887 (*ibid.*, 397); September 22, 1888 (25 *ibid.*, 484); March 2, 1889 (*ibid.*, 829); June 13, 1890 (26 *ibid.*, 152); February 24, 1891 (*ibid.*, 774); July 16, 1892 (27 *ibid.*, 178); February 27, 1893 (*ibid.*, 482); August 6, 1894 (28 *ibid.*, 238).

ment, all under the direction and authority of the Secretary of War.<sup>1</sup> *Act of February 12, 1895 (28 Stat. L., 660).*

Draught animals; limit of purchases.

Feb. 9, 1887, v. 24, p. 398; Sept. 22, 1888, v. 25, p. 486.

**1169.** Hereafter no part of this appropriation shall be expended in the purchase for the Army of draught animals until the number on hand shall be reduced to five thousand, and thereafter shall only be expended for the purchase of a number sufficient to keep the supply up to five thousand. *Act of September 22, 1888 (25 Stat. L., 486).*

Purchase of means of transportation.

July 5, 1884, v. 23, p. 110.

**1170.** Hereafter all purchases of horses, mules, or oxen, wagons, carts, drays, ships and other seagoing vessels, also all other means of transportation, shall be made by the Quartermaster's Department, by contract, after due legal advertisement except in cases of extreme emergency. *Act of July 5, 1884 (23 Stat. L., 110).*

Transportation of stores, etc., by contract.

July 5, 1884, v. 23, p. 109.

**1171.** In time of peace the number of draught and pack animals in the Quartermaster's Department of the Army shall not exceed five thousand; that all transportation of stores by private parties for the Army shall be done by contract, after due legal advertisement, except in cases of emergency, which must be at once reported to the Secretary of War for his approval. *Ibid. (23 Stat. L., 109).*

Limit of expenditures on buildings and grounds.

Feb. 27, 1893, v. 27, p. 484.

**1172.** That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post, or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates by the Quartermaster's Department; and the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.<sup>2</sup> *Act of February 27, 1893 (27 Stat. L., 484).*

Post bakeries, schools, kitchens, gardens, etc.

June 13, 1890, v. 26, p. 152.

**1173.** That for the current fiscal year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bake-house to carry on post bakeries; for the

<sup>1</sup> This paragraph has appeared, as a proviso, in each annual appropriation bill since June 30, 1886. See acts of June 30, 1886 (24 Stat. L., 97); February 5, 1887 (24 ibid., 398); September 22, 1888 (25 ibid., 485); March 2, 1889 (ibid., 830); June 13, 1890 (26 ibid., 153); February 24, 1891 (ibid., 775); July 16, 1892 (27 ibid., 179); February 27, 1893 (ibid., 483); August 6, 1894 (28 ibid., 239); February 12, 1895 (ibid., 660). The several acts of appropriation for the support of the Army since that of June 30, 1886 (24 Stat. L., 96), have contained a proviso that no part of the appropriations "shall be expended for printing unless the same shall be done by contract, after due notice and competition, except in such case as the emergency will not admit of the giving notice for competition."

<sup>2</sup> This paragraph continued to appear as a proviso in several acts of appropriation for the support of the Army prior to the act of February 27, 1893 (27 Stat. L., 454). See acts of March 3, 1885 (23 Stat. L., 360); June 30, 1886 (24 ibid., 97); February 9, 1887 (ibid., 399); September 22, 1888 (25 ibid., 486); March 2, 1889 (ibid., 830); June 13, 1890 (26 ibid., 154); February 24, 1891 (ibid., 776); July 16, 1892 (27 ibid., 180); February 27, 1893 (ibid., 484). The same act requires that the posts at which hospital stewards' quarters are to be constructed shall be designated by the Secretary of War, and that such quarters shall, whenever practicable, be built by contract. (27 Stat. L., 484.)

necessary furniture, text-books, paper and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; \* \* \* each and all for use of the enlisted men of the Army. *Act of June 13, 1890 (26 Stat. L., 152).*

1174. That hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges, but this proviso shall not be construed to prohibit the use by post exchanges of public buildings or public transportation when, in the opinion of the Quartermaster-General, not required for other purposes. *Act of July 16, 1892 (27 Stat. L., 178).*

1175. Contracts for subsistence supplies for the Army, made by the Commissary General, on public notice, shall provide for a complete delivery of such articles, on inspection, at such places as shall be stipulated.

Post gardens and exchanges.  
July 16, 1892, v. 27, p. 178.

Contracts for subsistence supplies.  
Apr. 14, 1818, c. 61, s. 7, v. 3, p. 427;  
Mar. 3, 1835, c. 49, s. 1, v. 4, p. 780;

Mar. 2, 1861, c. 84, s. 10, v. 12, p. 220. Sec. 3715, R. S.

1176. That hereafter so much of section thirty-seven hundred and nine,<sup>1</sup> Revised Statutes, as requires advertisement before purchase shall not apply to the purchase of medicines and medical supplies. *Act of February 27, 1893 (27 Stat. L., 485).*

Purchase of medicines, etc.  
Feb. 27, 1893, v. 27, p. 485.

1177. Purchase of ordnance and ordnance stores and supplies may be made by the Ordnance Department in open market, in the manner common among business men, when the aggregate of the amount required does not exceed two hundred dollars, but every such purchase shall be immediately reported to the Secretary of War. *Act of August 6, 1894 (28 Stat. L., 242).*

Purchases of ordnance in open market; limitation.  
Aug. 6, 1894, v. 28, p. 242.

1178. Every person who shall furnish supplies of any kind to the Army or Navy shall be required to mark and distinguish the same with the name of the contractor furnishing such supplies, in such manner as the Secretary of War and the Secretary of the Navy may, respectively, direct; and no supplies of any kind shall be received, unless so marked and distinguished.

Name of contractor to appear on supplies.  
July 17, 1862, c. 200, s. 15, v. 12, p. 596.  
Sec. 3731, R. S.

<sup>1</sup> Paragraphs 1151-1153, *ante*.



## MISCELLANEOUS PROVISIONS.

Par.	Par.
1179. Contracts for stationery, etc., limited to one year.	1184. The same; penalty.
1180. Transfers of contracts prohibited.	1185. Contracts to be filed with auditors.
1181. Members of Congress not to be interested in contracts.	1186. Inspection of fuel in the District of Columbia.
1182. The same; what interest allowable.	1187. Appointments of weighers, etc., to be certified to accounting officers.
1183. Stipulation that no Member of Congress has an interest.	1188. No payments for fuel without certificate.

Contracts for stationery, etc., limited to one year.

Jan. 31, 1868, Res. No. 8, v. 15, p. 246.

Sec. 3735, R. S.

Transfers of contracts prohibited.

July 17, 1862, c. 200, s. 14, v. 12, p. 596.

Sec. 3737, R. S.

1179. It shall not be lawful for any of the Executive Departments to make contracts for stationery or other supplies for a longer term than one year from the time the contract is made.

1180. No contract or order, or any interest therein, shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract or order transferred, so far as the United States are concerned. All rights of action, however, for any breach of such contract by the contracting parties, are reserved to the United States.<sup>1</sup>

<sup>1</sup> This clause is imperative and bars any action by the assignor as well as the assignee. *Wanless v. U. S.*, 6 C. Cls. R., 123. The purpose of the act of July 17, 1862 (sec. 3737, R. S.), prohibiting the transfer of Government contracts, was to secure the personal attention and services of the contractor and to render him liable to punishment under section 16 of the same act. \* \* \* No formal or written transfer is necessary to bring the case within the prohibition of the act. It is sufficient to annul the contract that the facts disclose a substantial transfer. *Francis v. U. S.*, 11 C. Cls. R., 638; *Wheeler v. U. S.*, 5 C. Cls. R., 504; *McCord's Case*, 9 C. Cls. R., 155.

In view of the positive prohibition of section 3737, Revised Statutes, that no contract or interest therein shall be transferred by the contractor, and the further provision that any such transfer shall operate as an annulment of the contract, "so far as the United States are concerned," held that an officer of the Army representing the United States in a contract for military transportation would not be authorized, of his own discretion, to consent or waive objection to an assignment, in whole or in part, of a contract, by the contractor, so as to admit the assignee to perform the service. (a) (Dig. Opin. J. A. G., 284, par. 18.)

Where a contract has been once formally entered into with a certain party, for the officer representing the United States to assume to admit additional parties into the agreement and undertaking (thus in fact consenting to a transfer by the con-

a That an assignment of a contract transfers no legal claim or right of action to the assignee, and that a contract when assigned is no longer binding upon the United States, see *Wheeler v. U. S.*, 5 C. Cls. R., 504; *Wanless v. U. S.*, 6 *ibid.*, 123; *Gill v. U. S.*, 7 *ibid.*, 523; *McCord v. U. S.*, 9 *ibid.*, 156; *Francis v. U. S.*, 11 *ibid.*, 638; 10 Opin. Att. Gen., 523. But it has been held by the Attorney-General that the statute on the subject (sec. 3737, R. S.) is intended simply for the benefit and protection of the United States, which, therefore, is not compelled to avail itself of a transfer by the contractor to annul the contract, but may recognize the same and accept and pay the assignee. "Were it to be held," observes the Attorney-General, "that a transfer of an interest would absolutely avoid the contract, it would enable any party making a contract with the United States to avoid it by simply transferring an interest therein, which is a construction manifestly inadmissible." Opinion in the case of the "Fifteen per cent contracts" (15 Opins., 235). And similarly held by the same authority in a later opinion, in 16 Opins., 277, that while the United States may avail itself of an assignment to declare the contract annulled, it is not required to do so, but, if deemed to be for its interests, may recognize the assignee. "But it is clear that an officer of the Army could not properly assume to treat an assignment of a contract (or interest therein) as valid without the authority and direction of the Secretary of War. That for a mail contractor to contract with another person to transport the mail for him, and as his servant or employee, was not an assignment of his contract with the United States, was held in the recent case of *Frye v. Burdick*, 67 Maine, 408.

1181. No member of or Delegate to Congress shall directly or indirectly, himself, or by any other person in trust for him, or for his use or benefit, or on his account, undertake, execute, hold, or enjoy, in whole or in part, any contract or agreement made or entered into in behalf of the United States, by any officer or person authorized to make contracts on behalf of the United States. Every person who violates this section shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars. All contracts or agreements made in violation of this section shall be void; and whenever any sum of money is advanced on the part of the United States, in consideration of any such contract or agreement, it shall be forthwith repaid; and in case of refusal or delay to repay the same, when demanded, by the proper officer of the Department under whose authority such contract or agreement shall have been made or entered into, every person so refusing or

Members of Congress not to be interested in contracts.

Apr. 21, 1862, c. 44, s. 1, v. 2, p. 484; June 22, 1874, c. 329, v. 18, p. 177. Sec. 3739, R. S.

tractor of an interest in the contract), would be wholly unauthorized. (*Ibid.*, 235 par. 19.)

A mere power of attorney given by a contractor to another person authorizing him to receive for the contractor moneys coming due under the contract can not, of course, operate as a transfer of an interest therein; but where, by a written agreement between a contractor and another party, the latter was empowered to receive the payments from the United States, in consideration of which he undertook to continue and complete the work contracted for, held that such agreement was a power coupled with an interest, and operated as a transfer within the meaning of section 3737, Revised Statutes (a) (*ibid.*, par. 29.).

Under no circumstances can the United States permit or recognize the transfer of a contract to a third party, for the reason that such transfers are prohibited by section 3737 of the Revised Statutes, and that, if the United States could permit any such transfer, its assent would release the sureties on the contractor's bond. (3 Dig. Compt. Dec., 113.)

Under section 3737, Revised Statutes, the assignment of a contract wholly invalidates it, unless the Government elects to treat it as still in force. Where the Government accepts from the assignee work or materials under the contract, or permits a part performance, it ratifies the assignment. (b) Where the War Department assented to the transfer of a contract for the manufacture of ordnance from one iron works to another, and accepted deliveries from the latter, held that the contract remained in full force. (Dig. J. A. Gen., p. 290, par. 61.)

An assignment, to have the effect of invalidating a contract, need not be express, nor need it be technical, formal, or written. (c) It may be evidenced by the various facts or circumstances illustrating the relations and intention of the parties. (*Ibid.*, par. 62.)

This provision is intended only for the protection of the United States. The Government may avail itself of the assignment or transfer to annul the contract, but it is not compelled to do so. (15 Opin. Att. Gen., 278; 15 *ibid.*, 236.)

There is a distinction between the assignment of a Government contract and an assignment of a claim for money due under a contract. The former is void under the act of July 17, 1862 (sec. 3737, R. S.), and passes no title, legal or equitable; the latter passes title to the money due, as though it were the sale of a chattel. *McCord v. U. S.*, 9 C. Cls. R., 155; *Lawrence v. U. S.*, 8 *ibid.*, 252. The sale of a quartermaster's voucher by a contractor to a third party works a transfer of his claim against the Government, or of so much of it as is represented by the voucher. But such vouchers are in no sense negotiable paper, and the purchaser will take them subject to all the equities that may exist against a contractor. *Lawrence & Crowell v. U. S.*, 8 *ibid.*, 252. An officer purchasing an article is without authority of law to issue a voucher for the purchase money to a third person, at the vendor's request, there being no privity of contract between the United States and such third person. *Johnston v. U. S.*, 13 *ibid.*, 217.

It has, however, been held that section 3477, which prohibits or makes null and void all transfers and assignments of claims against the Government, does not apply to involuntary assignments in bankruptcy (*Erwin v. United States*, 97 U. S., 392), or even to voluntary assignments for the benefit of creditors (*Goodman v. Niblack*, 102 U. S., 556). It seems to me that the reasoning of these cases applies with equal force to section 3737. (2 Compt. Dec., 50.)

<sup>a</sup> See authorities above cited, 15 Opin. Att. Gen., 235; 16 *ibid.*, 277; *Francis v. U. S.*, 11 C. Cls. R., 638.

<sup>b</sup> *Wheeler v. U. S.*, 5 C. Cls. R., 504.

<sup>c</sup> *Francis v. U. S.*, 11 *ibid.*, 638.

delaying, together with his surety or sureties, shall be forthwith prosecuted at law for the recovery of any such sum of money so advanced.<sup>1</sup>

What interest allowable.

Apr. 21, 1808, c. 48, s. 2, v. 2, p. 484; Feb. 27, 1877, v. 19, p. 249.

Sec. 3740, R. S.

**1182.** Nothing contained in the preceding section shall extend, or be construed to extend, to any contract or agreement, made or entered into, or accepted, by any incorporated company, where such contract or agreement is made for the general benefit of such incorporation or company; nor to the purchase or sale of bills of exchange or other property by any member of or delegate to Congress, where the same are ready for delivery, and payment therefor is made, at the time of making or entering into the contract or agreement.

Stipulation that no Member of Congress has an interest.

Apr. 21, 1808, c. 48, s. 3, v. 2, p. 484; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3741, R. S.

**1183.** In every such contract or agreement to be made or entered into, or accepted by or on behalf of the United States, there shall be inserted an express condition that no member of [or delegate to] Congress shall be admitted to any share or part of such contract or agreement, or to any benefit to arise thereupon.<sup>1</sup>

The same.

Apr. 21, 1808, c. 48, s. 4, v. 2, p. 484; Feb. 27, 1877, c. 69, v. 19, p. 249.

Sec. 3742, R. S.

**1184.** Every officer who, on behalf of the United States, directly or indirectly makes or enters into any contract, bargain, or agreement in writing or otherwise, other than such as are hereinbefore excepted, with any member of or delegate to Congress, shall be deemed guilty of a misdemeanor, and shall be fined three thousand dollars.<sup>1</sup>

Contracts to be filed with auditors.

July 31, 1894, s. 18, v. 28, p. 210.

Sec. 3743, R. S.

**1185.** All contracts to be made, by virtue of any law, and requiring the advance of money, or in any manner connected with the settlement of public accounts, shall be deposited promptly in the offices of the Auditors of the Treasury, according to the nature of the contracts: *Provided*, That this section shall not apply to the existing laws in regard to the contingent funds of Congress.<sup>2</sup> *Act of July 31, 1894 (28 Stat. L., 210).*

<sup>1</sup> Under sections 3739-3742, Revised Statutes, it is illegal for an officer of the United States to enter into a contract or make a purchase of a firm or association (not incorporated) of which a Member of or Delegate to Congress is a member or in which one is pecuniarily interested. (a) (Dig. Opin. J. A. Gen., 284, par. 16.)

Paragraph 589 of the Army Regulations of 1895 prohibits purchases by officers of the Army "from any other person in the military service." Held that this prohibition did not embrace civilians employed in the public service under the War Department, or in connection with the military administration, and therefore did not preclude the making of a contract by an ordnance officer, as representing the United States, with a civil employee at an arsenal, for the use of an invention patented by the latter. (b) (Ibid., par. 17.)

The form of a proposed contract contained the stipulation that "no person belonging to or employed in the military service of the United States is or shall be admitted to any share or part of this contract." The description "person employed in" is understood to mean all such clerks, mechanics, laborers, or other civilians as are legally employed by the military authorities in or in connection with military works, operations, or other authorized transactions. So where a lowest bidder was a civilian laborer at the Springfield Armory, advised that the contract be made with the next lowest bidder, who was under no such incapacity. (Ibid., 296, par. 52.)

<sup>2</sup> All formal written contracts connected with the settlement of public accounts

a That section 3739, Revised Statutes, does not affect contracts made with persons who have been simply elected Members of or Delegates to Congress, but have not actually become such by being sworn in—see opinion of the Attorney-General of May 19, 1877 (15 Opins. Att. Gen.), citing 16 *ibid.*, 406.

b See *U. S. v. Burns*, 12 Wallace, 251, 252; 10 Opins. Att. Gen., 2; 20 *ibid.*, 329.

1186. It shall not be lawful for any officer or person in the civil, military, or naval service of the United States in the District of Columbia to purchase anthracite or bituminous coal or wood for the public service except on condition that the same shall, before delivery, be inspected and weighed or measured by some competent person to be appointed by the head of the Department or chief of the branch of the service for which the purchase is made from among the persons authorized to be employed in such Department or branch of the service: *Provided*, That the weigher or measurer of the Navy Department may be appointed outside of said Department, and that such weigher and measurer shall give bond and be paid as heretofore provided by law. The person appointed under this section shall ascertain that each ton of coal weighed by him shall consist of two thousand two hundred and forty pounds, and that each cord of wood to be so measured shall be of the standard measure of one hundred and twenty-eight cubic feet. Each load or parcel of wood or coal weighed and measured by him shall be accompanied by his certificate of the number of tons or pounds of coal and the number of cords or parts of cords of wood in each load or parcel.<sup>1</sup> *Act of March 2, 1895 (28 Stat. L., 808).*

Inspection of  
fuel in District  
of Columbia.  
July 11, 1870, s.  
1, v. 16, p. 229.

Appointment  
of inspectors,  
etc.  
Mar. 2, 1895, s.  
6, v. 28, p. 808.  
Sec. 3711, R. S.

1187. The proper accounting officer of the Treasury shall be furnished with a copy of the appointment of each inspector, weigher, and measurer appointed under the preceding section. *Sec. 2, ibid.*

Appointments  
of weighers, etc.,  
to be certified to  
accounting officer.  
Sec. 2, *ibid.*  
Sec. 3712, R. S.

should be placed, and should remain, on file in the offices designated by law as their proper depositories. (3 Dig. Compt. Dec., 112.)

Under paragraph 554 of the Army Regulations of 1895 formal written contracts are to be executed in quintuplicate, one of which is to be filed, in accordance with section 3743 of the Revised Statutes, with the proper Comptroller of the Treasury, because they are connected with the settlement of public accounts. (*Ibid.*, p. 111.)

Under section 3743 of the Revised Statutes all contracts in any manner connected with the settlement of public accounts by the Second, Third, and Fourth Auditors and the Second Comptroller are to be deposited or filed in the Second Comptroller's Office within ninety days after their respective dates. This statutory requirement includes not only all formal written contracts or specialties in any manner connected with the settlement of accounts, but also all properly authorized extensions or other modifications of such contracts, every modification of a contract being in the nature of a new contract and connected with the settlement of accounts. (*Ibid.*, p. 112.)

Only formal written contracts are required under section 3743 of the Revised Statutes to be filed in the office of the Second Comptroller. Informal contracts and the papers pertaining thereto should be filed with the accounts or vouchers to which they relate, in order to facilitate the examination and revision of accounts and vouchers. (*Ibid.*, 109.)

A separate notification is required in each case of extension of a contract, so that it can be filed, with the contract to which it pertains, in the office of the Second Comptroller. Otherwise notifications of extensions of contracts will fail of the purpose contemplated in section 3743 of the Revised Statutes. (*Ibid.*, 112.)

Formal written contracts made and filed in the proper office in pursuance of law must be regarded as necessary in the settlement of public accounts or claims, and therefore can not properly be returned either for cancellation or amendment. (*Ibid.*)

The Second Comptroller is not authorized to deliver to either of the parties to a contract, for any purpose whatever, any contract connected with the settlement of public accounts which has been properly placed in his custody under the provisions of section 3743 of the Revised Statutes. (*Ibid.*)

<sup>1</sup>See also, for further statutory provisions on this subject, the Act of June 14, 1878 (20 Stat. L., 131), and sections 12, 13, 14, and 15 of the act of March 2, 1895 (28 Stat. L., 813).

No payments  
for fuel, etc.,  
without certifi-  
cate.  
*Ibid.*  
Sec. 3713, R. S.

1188. It shall not be lawful for any accounting officer to pass or allow to the credit of any disbursing officer in the District of Columbia any money paid by him for purchase of anthracite or bituminous coal or for wood, unless the voucher therefor is accompanied by a certificate of the proper inspector, weigher, and measurer that the quantity paid for has been determined by such officer. *Ibid.*

#### THE RETURNS OFFICE.

Par.

1189. The returns office; con-  
tracts to be in writing.

1190. Oath to return, etc.

Par.

1191. Penalty for omission to  
make return.

1192. Instructions to be furnished.

The returns  
office; contracts  
to be in writing  
June 2, 1862, c.  
s. 93, 1, v. 12, p.  
411.  
Sec. 3744, R. S.

1189. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior, to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties with their names at the end thereof; a copy of which shall be filed by the officer making and signing the contract in the Returns Office of the Department of the Interior, as soon after the contract is made as possible, and within thirty days, together with all bids, offers, and proposals to him made by persons to obtain the same, and with a copy of any advertisement he may have published inviting bids, offers, or proposals for the same. All the copies and papers in relation to each contract shall be attached together by a ribbon and seal, and marked by numbers in regular order, according to the number of papers composing the whole return.<sup>1</sup>

<sup>1</sup> It may be considered as settled that so much of section 3744 as provides that all contracts shall "be reduced to writing and signed by the contracting parties with their names at the end thereof" is mandatory, and contracts which do not comply with its requirements are void. In looking at the scope and purpose of this law and at the words in which it is couched, I can not doubt of the intention of Congress in its enactment. To my mind it is clear that it was designed to require every executory contract, at least, to be put in writing so that its terms might not be mistaken and that the character and extent of the outstanding engagements of the United States might at all times be known to the Executive and Legislative Departments, or be capable of being ascertained in a reasonable time and with appropriate exactitude. *Henderson v. U. S.* 4 C. Cls. R. 75, 83. There is no class of cases in which a statute for preventing frauds and perjuries is more needed than in this. And we think that the statute in question was intended to operate as such. It makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. *Clark v. U. S.*, 95 U. S., 539, 542; *South Boston Iron Co. v. U. S.*, 18 C. Cls. R., 165, 176. The provisions of this section apply to contracts made in emergencies. *Cobb et al. v. U. S.*, 18 C. Cls. R., 514, 532; *Clark v. U. S.*, 95 U. S., 539. Offers and acceptances by letter are preliminary memoranda only, and do not constitute a valid contract within the meaning of the statute. *South Boston Iron Co. v. U. S.*, 118 U. S., 37, 42. Where, however, a parol contract has been wholly or partly executed on one side, the party performing will be entitled to recover the fair value of his property or services as upon an implied contract for a quantum meruit. *Clark v. U. S.*, 95 U. S., 539. See also *Warren & Goss v. U. S.*, 23 C. Cls. R., 77; *South Boston Iron Co. v. U. S.*, 18 *ibid.*, 165, and 118 U. S., 37; *Clark v. U. S.*, 95 U. S., 543; *The International Contracting Co. v. Lamont*, 2 Ct. App. D. C., 532. See, also, *Lindsley v. U. S.*, 4 C. Cls. R., 359; *Burchiel v. U. S.*, 4 C. Cls. R., 549; *Bernheimer v. U. S.*, 5 C. Cls. R., 65.

The verification and return provided for in these sections have been held to be

1190. It shall be the further duty of the officer, before making his return, according to the preceding section, to affix to the same his affidavit in the following form, sworn to before some magistrate having authority to administer oaths: "I do solemnly swear (or affirm) that the copy of contract hereto annexed is an exact copy of a contract made by me personally with ———; that I made the same fairly without any benefit or advantage to myself, or allowing any such benefit or advantage corruptly to the said ———, or any other person; and that the papers accompanying include all those relating to the said contract, as required by the statute in such case made and provided."

Oath to return,  
etc.  
Sec. 2, *ibid.*  
Sec. 3745, R. S.

1191. Every officer who makes any contract, and fails or neglects to make return of the same, according to the provisions of the two preceding sections, unless from unavoidable accident or causes not within his control, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred, and imprisoned not more than six months.

Penalty for  
omitting to  
make returns.  
Sec. 3, *ibid.*  
Sec. 3746, R. S.

1192. It shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to furnish every officer appointed by them with authority to make contracts on behalf of the Government with a printed letter of instructions, setting forth the duties of such officer, under the two preceding sections, and also to furnish therewith forms, printed in blank, of contracts to be made, and the affidavit of returns required to be affixed thereto, so that all the instruments may be as nearly uniform as possible.

Instructions to  
be furnished.  
Sec. 5, *ibid.*  
Sec. 3747, R. S.

mandatory only upon the officer who made the contract. A contract reduced to writing and executed with all the formality which the law requires, will not be invalidated by a failure of the officer to make a proper return of the same. That is made his exclusive duty by the law, and he alone is to be punished for it by the stringent and severe penalties prescribed by the act. *Henderson v. U. S.*, 4 C. Cls. R., 75, 81; *Clark v. U. S.*, 95 U. S., 539; *Power v. U. S.*, 18 C. Cls. R., 263.

A mere understanding or oral agreement can not constitute a contract in the War Department. Were it not indeed for the provisions of section 3744, Revised Statutes, the acceptance of a bid would, under the general law of contracts, bind the United States. But this section has been construed by the Supreme Court as being in the nature of a statute of frauds and mandatory in its requirements, and therefore making it essential that a contract, to be legal and obligatory, shall be in writing and signed by the parties. (2) The mere proposal of a bidder, accepted on the part of the Government, does not therefore operate as a contract but is simply a proceeding preliminary to contract; nor does such an acceptance bind the United States to enter into a contract. (Dig. Opin. J. A. Gen., 295, par. 48.)

It is proper to remark that in the event of a suit being instituted against a principal or surety on a contract of the United States, the copy of the contract filed in the Returns Office would have no evidential value, and a copy of the original filed in the office of the Comptroller of the Treasury under the provisions of section 3743, Revised Statutes (paragraph 1185, *supra*), would have to be produced subject to the authentication required in section 886 of the Revised Statutes. See paragraphs 391-394, ante, for other statutory provisions respecting the returns office.

## THE EIGHT-HOUR LAW.

Par.	Par.
1193. Eight hours to be a day's work.	1196. Present contracts not affected.
1194. The same; contractors; emergencies.	1197. Penal bond to include security for labor and materials.
1195. Penalty for violation by officer or contractor.	1198. Security for costs.

Eight hours to be a day's work.  
Sec. 3738, R. S.

1193. Eight hours shall constitute a day's work for all laborers, workmen, and mechanics who may be employed by or on behalf of the United States.<sup>1</sup>

The same; contractors; emergencies.  
Aug. 1, 1892, v. 27, p. 340.

1194. That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.<sup>2</sup> *Act of August 1, 1892 (27 Stat. L., 340).*

Penalty for violation by officer or contractor.  
Sec. 2, *ibid.*

1195. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer<sup>3</sup> or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall upon

<sup>1</sup> The eight-hour law is in the nature of a direction from a principal to his agent, in which third party has no interest. It does not make a contract, nor prevent officers from contracting, by express agreement, for day's labor of more or less than eight hours. (*Martin v. U. S.*, 12 C. Cls. R., 87 and 94 U. S., 400.)

The eight-hour law does not establish an inflexible rule for the payment of wages. Its intent is not to increase wages, but to elevate the condition of laboring men by diminishing their hours of labor. (*Averill v. U. S.*, 14 C. Cls. R., 200.)

<sup>2</sup> The term "extraordinary emergency," employed in the first section of the act of August 1, 1892, can not properly be construed in advance as referring or applicable to any particular class of cases. The question whether there is or was such emergency should be left to be determined by the facts of each special instance as it arises. A case in which it appeared that a compliance with the statute was not possible might well be held to be one of "extraordinary emergency." (*Dig. Opin. J. A. Gen.*, 382, par. 6.)

<sup>3</sup> *Held*, that the term "laborer," as used in the act of 1892, was apparently intended in a comprehensive sense, and that to declare certain classes of employment as "peculiar," and therefore excepted from the operation of the act, would be a restriction not warranted by the language of the statute. Thus a proposed regulation, excepting "watchmen, messengers, teamsters, engineers, firemen, seamen," and some others, as not included in the description "laborers and mechanics," not recommended to be adopted. (*Dig. Opin. J. A. Gen.*, 380, par. 4.)

conviction be punished by a fine not to exceed one thousand dollars or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.<sup>1</sup> *Sec. 2, ibid.*

1196. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or sub-contractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act. *Sec. 3, ibid.*

Present con-  
tracts not af-  
fected.  
*Sec. 3, ibid.*

<sup>1</sup>The original statute on this subject—the act of June 25, 1868, incorporated in section 3738, Revised Statutes—merely provided that eight hours should “constitute a day’s work” for laborers, etc., employed by the United States. It has been held by the Supreme Court (U. S. v. Martin, 94 U. S. 400), (a) that this enactment was merely “a direction by the Government to its agents,” not “a contract between the Government and its laborers, that eight hours shall constitute a day’s work,” and that it did not “prevent the Government from making agreements with them by which their labor may be more (or less) than eight hours a day.” The act thus failed of its apparent object. To cure this defect was passed the act of August 1, 1892, chapter 352. *Held*, therefore, that the term “public works of the United States,” used in the first section of the later act, should not be narrowly construed. (Dig. Opin. J. A. Gen., 380, par. 1.)

Thus held that the construction of levees on the banks of the Mississippi River, in accordance with the plans of the Mississippi River Commission, was a public work of the United States in the sense of the act of August 1, 1892, chapter 352, section 1, although the United States did not own the land. A proprietorship in or jurisdiction over the thing constructed is not necessary. The United States expends annually more than twenty millions for the improvement of rivers and harbors, but the greater part of this is done without acquiring title or jurisdiction to or over the premises. The question under the act is not in whom is the title or jurisdiction, but who is doing the work. The construction of these levees is a particular work appropriated for by Congress and to be contracted for by the United States. It is therefore one of the public works of the United States, and subject to the provisions of this statute. (b) (*Ibid.*, par. 2.)

*Held*, that it was not essential that the requirement of the act of August 1, 1892, be embodied in a contract, the law itself being self-acting. The responsibility rests on contractors to comply with it, irrespective of the terms and conditions of their contracts. The officers who enter into contracts on behalf of the United States are not charged with the duty of enforcing the law with reference to those with whom they contract, the latter being directly responsible in the matter. Any construction by the War Department of the requirements of the act would, if erroneous and not sustained by the courts, be no protection to contractors. (*Ibid.*, p. 381, par. 3.)

Inquiry having been made of the War Department by certain contractors whether the men employed on dredges, scows, and tugs, on Lake Erie, under contracts with the United States, were not to be regarded as excepted from the application of the act of 1892, *held* that it was not the duty or province of this Department to determine such questions, but that the same were for the courts to decide, on trials, under the second section of the act, of persons charged with violations of its provisions. Neither this or other Department of the Government can lay down rules, or make constructions of the law, for contractors, which would effectually protect them were they brought to trial. (c) (*Ibid.*, p. 382, par. 5.)

No provision is contained in the act of 1892 for the suspension of its operation, and the Secretary of War has no power to suspend it as to certain work or places of work on the theory that an “emergency” exists as to the same. Nor can he lay down in advance any general rule as to what would be such an emergency as would relieve an officer or contractor from liability, or give him an immunity from prosecution. The question of the existence of an emergency is to be determined, in the first instance, by the person carrying on, or in charge of the work; in the second, by the court, if the case comes before one. It may be said generally that when the emergency can be foreseen it is not extraordinary; that increased expense and inconvenience can not constitute an emergency which can not be foreseen and guarded against. (*Ibid.*, par. 7.)

a And see 19 Opin. Att. Gen., 685.

b In the recent case of U. S. v. Jefferson, 60 Fed. Rep., 736, it is held that seamen employed on a steam snag boat belonging to the War Department, engaged in removing obstructions to navigation, were employed upon a “public work of the United States,” and that the master of the boat, in exacting from them more than eight hours labor per diem, was indictable under the act of August 1, 1892.

c In a communication to the Secretary of War of August 29, 1892, the Attorney-General, whose opinion had been asked with regard to the application in general of the act to the “construction of levees on the Mississippi River,” declines to give an official opinion with a view to the guidance of persons who may propose to enter into contract relations with the United States, in the absence of a special case requiring the action of the Secretary. (See 20 Opin. Att. Gen., 459.)



## BONDS TO SECURE PAYMENT FOR LABOR AND MATERIALS.

Penal bond to include security for labor and materials.

Aug. 13, 1894, v. 28, p. 278.

Action on bond or labor or materials furnished.

Security for costs.

Sec. 2, *ibid.*

**1197.** That hereafter any person or persons entering into a formal contract with the United States for the construction of any public building, or the prosecution and completion of any public work or for repairs upon any public building or public work, shall be required before commencing such work to execute the usual penal bond, with good and sufficient sureties, with the additional obligations that such contractor or contractors shall promptly make payments to all persons supplying him or them labor and materials in the prosecution of the work provided for in such contract; and any person or persons making application therefor, and furnishing affidavit to the Department under the direction of which said work is being, or has been, prosecuted, that labor or materials for the prosecution of such work has been supplied by him or them, and payment for which has not been made, shall be furnished with a certified copy of said contract and bond, upon which said person or persons supplying such labor and materials shall have a right of action, and shall be authorized to bring suit in the name of the United States for his or their use and benefit against said contractor and sureties and to prosecute the same to final judgment and execution: *Provided*, That such action and its prosecutions shall involve the United States in no expense.<sup>1</sup> *Act of August 13, 1894* (28 Stat. L., 278).

**1198.** Provided that in such case the court in which such action is brought is authorized to require proper security for costs in case judgment is for the defendant. *Sec. 2, ibid.*

<sup>1</sup> When a contract is entered into for the construction of any public building, or the prosecution and completion of any public work, or for repairs on any public building or public work, the contractor will be required, before entering upon performance of the same, to include in the bond given for the faithful performance of the contract the further obligation that he will promptly make payments to all persons who supply him with labor and materials for the prosecution of the work provided for in such contract. A certified copy of this contract and bond will be furnished to any person who has supplied such labor or materials, upon his application to the War Department, accompanied by an affidavit that the labor or materials have been supplied by him and have not been paid for by the contractor. (Par. 565, A. R., 1895.)

## CHAPTER XXXII.

### THE PUBLIC LANDS—MILITARY RESERVATIONS—MILITARY POSTS.

#### THE PUBLIC LANDS<sup>1</sup>—MILITARY RESERVATIONS.

Par.	Par.
1199. Lands subject to pre-emption.	1208. Acquisitions of lands for public uses by condemnation.
1200. Lands not subject to pre-emption.	1209. Procedure in condemnation.
1201. Military reservations.	1210. Jurisdiction over reservations; when exclusive.
1202. Right of way for highways over public lands.	1211. Sale of abandoned and useless military reservations.
1203. Right of way for tramroads, canals, and reservoirs.	1212. Lands on, opened to entry.
1204. Title to land to be examined by Attorney-General.	1213. Appraisement, etc.
1205. Restriction on purchases of lands.	1214. Preference to homestead settlers.
1206. Assent of States to purchases of lands.	1215. Secretary of War may lease public property not required for use; exception.
1207. Power to obtain releases.	

1199. All lands belonging to the United States, to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption, under the conditions, restrictions, and stipulations provided by law.

Lands subject to pre-emption.  
June 2, 1862, c. 94, s. 1, v. 12, p. 413;  
Feb. 11, 1874, c. 25, v. 18, p. 18;  
Feb. 23, 1875, c. 99, v. 18, p. 334;  
Apr. 21, 1876, c. 72, v. 19, p. 35.  
Shepley et al. v. Cowen et al., 91 U. S., 330.  
Sec. 2257, R. S.

<sup>1</sup>Lands acquired by the United States for public uses, by purchase with the consent of the legislatures of the States, or acquired by an exercise of the right of eminent domain, are not "public lands," that term applying only to such lands as are subject to sale or other disposition under general laws. *Newhall v. Sanger*, 92 U. S., 761; 5 Opin. Att. Gen., 578. Power over such lands is vested in Congress by the Constitution, without limitation, and is the foundation upon which the territorial governments rest. *U. S. v. Gratiot*, 14 Pet., 526. The power of Congress over the public land and the effect of its grants can not be interfered with by State legislation. *Gibson v. Chouteau*, 13 Wall., 92.

#### MILITARY RESERVATIONS.

No specific statutory authority exists empowering the President to reserve public lands; but the right to reserve such lands for public uses is recognized by the courts. 14 Dec. Int. Dep., 426, 607, 628; *Wolsey v. Chapman*, 101 U. S., 755, 768; *Wolcott v. Des Moines Co.*, 5 Wall., 681. Such reservation may be effected by proclamation or by Executive order. 13 Dec. Int. Dep., 426.

A military reservation, being simply territory of the United States withdrawn

Lands not subject to pre-emption.

Sept. 4, 1841, c. 16, s. 10, v. 5, p. 455; Jan. 12, 1877, c. 18, v. 19, p. 221. *Wilcox v. Jackson*, 13 Pet., 498; *Josephs v. U. S.*, 1 N. and H. 197; *Turner v. American Baptist Union*, 5 McLean, 344; *U. S. v. Railroad Bridge Company*, 6 McLean, 517; *Russell v. Beebe, Hemsps.*, 704.

Sec. 2258, R. S.

1200. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

First. Lands included in any reservation by any treaty, law, or proclamation of the President, for any purpose.<sup>1</sup>

from sale, pre-emption, (a) etc. (7 Opin. Att. Gen., 574, 757; 14 *ibid.*, 775), the mere fact of the establishing of such a reservation can not affect the power of the State or Territorial authorities (according as it may be located in a State or Territory), to serve civil or criminal process therein, or to attach or levy upon personal property, except in so far, of course, as such service may be specially precluded or restricted by law as to military persons in general. (b) Where indeed there has been a cession of exclusive jurisdiction over the land by the State to the United States, the question whether the State authorities may still serve process within the reservation on account of liabilities incurred or crimes committed outside of its limits will depend upon the terms of the cession. (Dig. J. A. Gen., 510, par. 1.)

Land which has been set apart as a portion of an Indian reservation, under a treaty, can not be occupied as a military reservation; nor can even a military post be maintained thereon, in derogation of the terms of the treaty or against the consent of the Interior Department. (c) *Ibid.*, 512, par. 3.)

*Held* that the right to the "free and open exploration and purchase" of mineral

<sup>1</sup>Under this head fall military and Indian reservations, the Yellowstone National Park, and the forest reservations in California set apart by the President under the authority conferred by section 24 of the act of March 3, 1891. See the chapter entitled NATIONAL PARKS.

a The Constitution (Art. IV, sec. 3, § 2) has vested in Congress the exclusive power "to dispose of and make all needful rules and regulations respecting the territory" (held in *U. S. v. Gratiot* (14 Peters, 537) to mean "lands") "or other property belonging to the United States." As a consequence perhaps of the indefiniteness of this grant (see 7 Opin. Att. Gen., 574) no general enactment providing for the setting apart of land for military reservations has ever been made by Congress. In a few cases, indeed, a special authority to establish a military reserve has been conferred upon the President by statute, but the great majority of the military reservations heretofore located or now existing have been made by the President without any such specific authority whatever. But though no general authority has been directly given by Congress for the reserving of lands for military purposes, an authority for the purpose has been deemed to exist, and this authority is found in the usage of the Executive Department of the Government, as indirectly sanctioned by Congress in repeated preemption acts, acts relating to the survey of the public domain, appropriation acts, etc., in which lands reserved for military purposes by the President have been in general terms excepted from sale, exempted from entry, etc., or special provision has been made for the cost of improvements to be erected upon the same. In *Grisar v. McDonald* (6 Wallace, 381) the United States Supreme Court, by Field, J., observes: "From an early period in the history of the Government it has been the practice of the President to order, from time to time, as the exigencies of the public service required, parcels of land belonging to the United States to be reserved from sale and set apart for public uses." Further, "The authority of the President in this respect is recognized in numerous acts of Congress." The court then cites several statutes as containing this recognition, including the preemption acts of May 29, 1830, and September 4, 1841, and adds: "The action of the President in the making (the military) reservations" (the title to which was at issue in the particular case) "was indirectly approved by the legislation of Congress in appropriating moneys for the construction of fortifications and other public works upon them." And see 12 Opin. Att. Gen., 381; 14 *ibid.*, 182; 17 *ibid.*, 253; *Wilcox v. Jackson*, 13 Peters, 512; *U. S. v. Hare*, 4 Sawyer, 653; also *U. S. v. R. R. Bridge Co.*, 6 McLean, 517.

It is, moreover, to be noted that the provision of the act of 1841, referred to by the Supreme Court, has been incorporated as a general enactment in the Revised Statutes in the chapter (chapter 4 of title 32) on preemptions; section 2258 expressly excepting from the lands of the United States "subject to the rights of pre-emption," "lands included in any reservation by any treaty, law, or proclamation of the President for any purpose." (And see section 2393, specifically excepting military reservations from the operation of the laws authorizing the establishing of town sites.) The "proclamation" of the President reserving lands for military purposes is usually in the form of a military general order, issued by the Secretary of War, whose act in this, as in other administrative proceedings pertaining to the military administration, is in legal contemplation the act of the President, whom he represents. But no head of a Department or executive official inferior to the President can, of his own authority, make a reservation of public lands. The power is vested only in Congress and the President. *United States v. Hare*, 4 Sawyer, 653, 669.

In this connection may be noted the ruling of Attorney-General Bates (10 Opins., 359) in opposition to that of Justice McLean, of the Supreme Court (in *U. S. v. The Railroad Bridge Co.*, 6 McLean, 517), but apparently concurred in by Attorney-General Williams (14 Opins., 246), to the effect that where a tract of land of the United States has once been legally reserved for military purposes the President is not empowered, in the absence of authority from Congress, to relinquish such reservation and restore the land reserved to the general body of the public lands.

b As by section 1237, Revised Statutes, exempting enlisted men from arrest for certain debts, or by the operation of the provisions of the fifty-ninth article of war as to the form to be observed in making criminal arrests of military persons.

c By Article VI, section 2, of the Constitution, "all treaties made under the authority of the United States" are declared to be "the supreme law of the land;" and Indian reservations "have generally been made through the exercise of the treaty-making power, and in fulfillment of treaty obligations." (14 Opin. Att. Gen., 182.) That land can not be reserved or occupied for military purposes to the prejudice of a title previously vested in an individual or a corporation, see, further, 9 Opin., 339; 13 *ibid.*, 469.

Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

lands, accorded to citizens, etc., by section 2319 Revised Statutes, could not authorize an entry, for the purpose of prospecting for mines upon a military reservation once duly defined and established by the President; the mineral lands intended by the statute being clearly such as are included within the "public lands" of the United States. (*Ibid.*, 513, par. 5.)

Where certain persons had entered unlawfully upon a military reservation, and had proceeded to cultivate the soil of the same for their personal benefit and to lead off water, needed for the use of the garrison, in order to irrigate the ground so cultivated—*advised* that the commandant be instructed to give such person reasonable notice to quit with their property and if they did not comply, to remove them by military force beyond the limits of the reservation. (*a*) (*Ibid.*, par. 6.)

Squatters and other trespassers and intruders may and should be expelled, by military force if necessary, from a military reservation (*b*). But such persons, when they have been suffered to own and occupy buildings on a reservation, should be allowed reasonable time to remove them. If not removed after due notice the same should be removed by the military. Material abandoned on a reservation by a trespasser, on vacating, may lawfully be utilized by the commander for completing roads, walks, etc. Squatters on United States reservations may be forced therefrom by criminal proceedings had under section 5388, Revised Statutes, or ejected by civil action. (*Ibid.*, 516, par. 13.)

Where squatters have made any considerable improvements upon a reservation, and their value has been duly estimated—as by a board constituted by the department commander and presenting in its report all the evidence on the subject—an award by the Secretary of War, acquiesced in by the claimant, may be sued upon in the Court of Claims, which (in the absence of evidence of fraud or mistake) will accept such award as conclusive (*c*). (*Ibid.*, par. 14.)

The general principle of the authority to remove trespassers, their structures and property, from land of the United States embraced in a military reservation, *held* specially applicable where the intrusion was for an injurious purpose, as where the object was to lay a sewer intended to discharge into a main sewer constructed by the United States upon and for the use of its own premises. In this instance, as the trespass was committed by the authorities of a municipality, *advised* that reasonable notice be given them to remove their property before resorting to military force for the purpose, and meantime that precautions be taken to prevent a connection between the proposed sewer and the sewers under the control of the United States. (*Ibid.*, p. 517, par. 16.)

The cutting of timber on a military reservation is an offense against the United States, made punishable by section 5388, Revised Statutes, as amended by the acts of June 4, 1888, and of March 3, 1875, chapter 151. So, grass cut on a reservation and removed as hay would be personal property of which the asportation would be larceny under the act of March 3, 1875, chapter 144. And persons coming upon a military reservation for the purpose of cutting wood or grass, or to plow up the soil, or commit other trespass, may be removed as intruders, and the post commander should not hesitate to resort to military force if necessary for the purpose. And he may of course prevent such trespassers from carrying off with them any property of the United States. (*Ibid.*, par. 15.)

In the absence of any statute directly or by necessary implication extending the powers of the local government of the District of Columbia over the military reservation and post at the Arsenal in Washington, *held* (May, 1879) that the health officer appointed by the Commissioners (constituting such government), would not be empowered of his own authority, and without the consent of the military commander, to enter upon such reservation and remove or abate a nuisance deemed by him to exist thereon. The effect of the legislation in regard to the government of the District is to except therefrom the public buildings and grounds of the United States, which are left to the charge of certain specified officials. Even farther removed from such government is the reservation at the Arsenal, the same being a military post commanded by the President through a military subordinate, and governed by military orders and regulations (*Ibid.*, p. 514, par. 7.)

The President's power in the matter of military reservations is limited to the setting apart and declaring of the reservation; and, for the purpose of adding to and modifying the boundaries of, the original reserved tract, a reservation may be redeclared by the Executive. But the President can not unreserve duly reserved land, either by revoking the order of reservation or otherwise. After lands have once been reserved for military purposes, the President, in the absence of authority, from Congress, is not empowered to withdraw or restore them. By the authority indeed, of the act of July 5, 1884, he may abandon a useless military reservation and turn the lands over to the Interior Department for disposition and sale. But he can not reserve lands once turned over, they being no longer a part of the public domain, but lands in regard to which Congress has expressed a different will. (*Ibid.*, par. 8.)

Land once duly reserved for a public purpose becomes separated from the mass of

*a* As to the authority to remove trespassers from military reservations, see 3 Opin. Att. Gen., 268; 9 *ibid.*, 106, 476; G. O. 74, Hdqrs. of Army, 1869. That this authority is not deemed to be affected by the provision of section 15 of the act of June 18, 1878, see chapter entitled EMPLOYMENT OF MILITARY FORCE. See, also, Dig. J. A. Gen., p. 162, par. 6; 165 *ibid.*, par. 9.

*b* See G. O. 62 of 1869.

*c* *Maddux v. U. S.*, 20 C. Cls. R., 193, 199.

Fourth. Lands on which are situated any known salines or mines.

Military or other reservation, etc.

Mar. 2, 1867, c. 177, v. 14, p. 541; Feb. 28, 1877, c. 74, v. 19, p. 264.

Sec. 2393, R. S.

1201. The provisions of this chapter<sup>1</sup> shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land Office by title derived from the Crown of Spain, or otherwise.

#### RIGHTS OF WAY.

Right of way for highways over public lands.

July 26, 1866, c. 262, s. 8, v. 14, p. 253.

Right of way for tramroads, canals, and reservoirs.

Jan. 21, 1895, v. 28, p. 635.

1202. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.<sup>2</sup>

1203. That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of the right of way through the public lands of the United States, not within the limits of any park, forest, military or Indian

public lands. So held that a proclamation of the President, issued under an act of Congress, opening to settlement lands in Oklahoma Territory, could not embrace or affect land previously duly reserved as a military timber reservation for the use of the post of Fort Reno. (*Ibid.*, par. 10.)

In the absence of express statutes limiting his authority, as in the case of military reservations, the President has the same authority to restore lands to the public domain that he had to reserve them for public uses. (14 Dec. Int. Dep., 209, 212.)

The ownership and jurisdiction of the soil between high and low water mark on navigable waters within or bordering upon a State are vested in the State, not in the United States. Tide lands belong to the State only; the United States has no interest in the soil below high-water mark other than such as may have been ceded by the State. (a) So where a military reservation, within a State, fronted upon navigable waters of the United States, at the mouth of the Columbia River, held that the military authorities could not, by the removal of fishing nets or fish traps placed below high-water mark, or otherwise, legally prevent or interfere with the exercise of the right of fishery as to scale or shell fish on the tide lands, such right being common to all citizens except in so far as it may be abridged by the State. (b) The Secretary of War is without authority to grant an exclusive right to use the shores of a military reservation for fishing purposes. (Dig. Opin. J. A. Gen., 515, par. 11.)

As between the United States and a State, the soil of the bed of navigable waters and of the shores of tide waters below high-water mark, or, on rivers not reached by the tide, the soil of the shores below the ordinary water line, as not affected by freshet or unusual drought, belongs to the State. But natural accretions to land owned by private individuals belong to the owners of the land. Thus, held that the accretions to Hog Island, in the mouth of the Missouri River, belonged, not to the United States or to the State of Missouri, but to the owner of the island. (*Ibid.*, 465, par. 2.)

Where land proposed to be conveyed by a State to the United States for the purpose of fortifications was described in the proffered deed as extending to the sea and in a line along the sea, held that such a deed would convey only land extending to and bounded by high-water mark, and advised that the grant should be so expressed as specifically to include the shore to low-water mark, and should also embrace such

<sup>1</sup> Chapter 8, Revised Statutes, relating to the reservation and survey of town sites on the public lands. See also the chapter entitled NATIONAL PARKS.

<sup>2</sup> Held, that an act of Congress granting a railroad company a right of way through "the public lands" of the United States did not authorize it to enter and construct a track upon the soil of a military reservation, the same being no part of "the public lands," (c) and that such entry was therefore a trespass. (Dig. J. A. Gen., 512, par. 2.) But see section 6, par. 1211, *post*.

The right of way through several military reservations has been granted to various railroads, or other corporate bodies, by express legislation in each case.

*α* Pollard's Lessees v. Hogan, 3 Howard, 212; Goodtitle v. Kibbe, 11 Howard, 477; Doe v. Bebee, 13 Howard, 25; 6 Opin. Att. Gen., 172.

*β* Washburn, Easements and Servitudes, 410; Martin v. Waddell, 16 Peters, 367; Smith v. Maryland, 18 Howard, 71; McCready v. Virginia, 94 U. S., 391; Lay v. King, 5 Day, 72; Arnold v. Mundy, 1 Halst., 1; Parker v. Cutler, etc., Co., 20 Maine, 353; Moulton v. Libbey, 37 *ibid.*, 472; Weston v. Sampson, 8 Cush., 347.

*c* Wilcox v. Jackson, 13 Pet., 499, 513; 5 Opin. Att. Gen., 578; 6 *ibid.*, 670; 7 *ibid.*, 574.

reservation, for tramroads, canals or reservoirs to the extent of the ground occupied by the water of the canals and reservoirs and fifty feet on each side of the marginal limits thereof; or fifty feet on each side of the center line of the tramroad, by any citizen or any association of citizens of the United States engaged in the business of mining or quarrying or of cutting timber and manufacturing lumber. *Act of January 21, 1895 (28 Stat. L., 635).*

#### ACQUISITION OF LANDS BY THE UNITED STATES.

1204. No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon any armory, arsenal, fort, fortification, navy-yard, custom-house, light-house, or other public building, of any kind whatever, until the written opinion of the Attorney-General shall be had in favor of the validity of the title, nor until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given. The district attorneys of the United

Title to land  
to be examined  
by Attorney-  
General.  
Sept. 11, 1841,  
Res. No. 6, v. 5, p.  
468.  
Sec. 355, R. S.

water-covered lands as would be sufficient to prevent the erection by the authority of the State of structures that might interfere with the proper use of the land for purposes of fortifications. (*Ibid.*, par. 3.)

In the case of a Territory, however, the sovereign right to the whole soil is exclusively in the United States. Thus the reservation of an island in the tide waters of a Territory includes not only its soil down to high-water mark but all its tide lands also. But in a Territory, in the absence of special regulation of the subject by Congress, no executive authority can lawfully restrict the common-law right of piscary of the inhabitants (including the taking of shellfish) in the tide waters of the Territory. So the commander of a reserved military post, fronting upon navigable water of a Territory, is not empowered to remove from such tide waters the seines or traps of fishermen, though, if the public interests require it, he may forbid or restrict the use of the shore above high-water mark for the hauling of seines or landing of fish. (*Ibid.*, par. 12.)

The State of Kansas, having surrendered to the United States its jurisdiction over the military reservations of Forts Leavenworth and Riley, by an act of its legislature of February 23, 1872, which was earlier in date than the prohibition laws of the State (having their origin in the constitution adopted November 2, 1880), held that such laws did not extend over and could not be applied to those reservations. (*Ibid.*, p. 517, par. 18.)

To legalize the use of a public road (State county, or Territorial) across a corner of a military reservation, held as follows: (1) The Secretary of War may, under the act of July 5, 1884, section 6, permit the extension of such a road across a military reservation "whenever, in his judgment, the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon;" (2) or he can abandon to the Secretary of the Interior, under the same act, the strip of the reservation to be traversed by the road, and the latter official can then authorize the road under section 2477, Revised Statutes, by which "rights of way for the construction of highways are granted over public lands not reserved for public uses." (*Ibid.*, par. 19.) See section 6, par. 1211, *post*.

The occupation of land, by permission of the military authorities, does not constitute a settlement that is within the protection accorded bona fide settlers by the act of July 5, 1884. (15 Dec. Int. Dept., 487.)

The occupation and improvement of land, with a view to preemption, does not except it from a subsequent reservation for military purposes. (15 Dec. Int. Dept., 487.) Land reserved for military purposes is not subject to homestead entry (13 Dec. Int. Dep., 617; *Grisar v. McDowell*, 6 Wall, 363, 381) or to entry under the public land laws. (13 Dec. Int. Dep., 628.)

In the administration of the public lands the decisions of the land department upon questions of fact are conclusive, and only questions of law can be reviewed in the courts. (*Catholic Bishop of Nesqueally v. Gibbon*, 158 U. S., 155.)

#### SUPERVISION OF RESERVATIONS.

Department commanders will supervise all military reservations within the limits of their commands, and if necessary, will use force to remove trespassers. No license or permission to any civilian to use or occupy any part of a reservation will be given, except by the Secretary of War, unless he be in the employ of the Government, or in the family or service of persons there employed. (Par. 210, A. R., 895.)

States, upon the application of the Attorney-General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. And the Secretaries of the Departments, upon the application of the Attorney-General, shall procure any additional evidence of title which he may deem necessary, and which may not be in the possession of the officers of the Government, and the expense of procuring it shall be paid out of the appropriations made for the contingencies of the Departments respectively.<sup>1</sup>

Restriction on purchases of land.

May 1, 1820, c. 52, s. 7, v. 3, p. 568  
Sec. 3736, R. S.

Assent of States to purchases of lands.

Apr. 28, 1828, c. 41, s. 2, v. 4, p. 264.

Sec. 1838, R. S.

1205. No land shall be purchased on account of the United States, except under a law authorizing such purchase.<sup>2</sup>

1206. The President of the United States is authorized to procure the assent of the legislature of any State, within which any purchase of land has been made for the erection

<sup>1</sup> See chapters entitled THE DEPARTMENT OF JUSTICE, CONTRACTS AND PURCHASES, THE ENGINEER CORPS, NATIONAL PARKS and NATIONAL CEMETERIES for additional provisions respecting the acquisition of lands. "When, in an act appropriating for the purchase of additional land for a public building, the piece of ground to be purchased is particularly described, the appropriation can not be used for the purchase of another tract equally suitable for the purpose, and at a price within the sum provided, although the piece named can not be secured within the amount appropriated." (2 Compt. Dec., 77.) See also section 1136, Revised Statutes (par. 1216, post), for provision requiring all officers of the United States having title papers of property purchased or about to be purchased in their possession to furnish the same forthwith to the Attorney-General.

The title to lands purchased on account of the United States is not properly assured by a certificate of "no liens," signed by the attorney who made the abstract of title. The proper person to make such a certificate is the custodian of the records of judgments and other record liens in the county in which the land is located. (a) (*Ibid.*, 631, par. 16.)

<sup>2</sup> In the absence of statutory authority, land can not be purchased for the United States with any more legality than land of the United States can be sold or disposed of. By a provision of an act of May 1, 1820 now contained in section 2736, Revised Statutes, it is declared that "No land shall be purchased on account of the United States except under a law authorizing such purchase." *Held* that the term "purchase" was to be understood in its legal sense, as embracing any mode of acquiring property other than by descent; (b) and that therefore the Secretary of War would not be empowered to accept a gift of land or interest in land for any use or purpose independently of statutory authority. (c) And similarly *held* as to the construction of the same word ("purchase") as employed in section 355, Revised Statutes, and advised that an appropriation of public money could not legally be expended for the erection of a public building upon land donated to the United States until the Attorney-General had passed the title and the legislature of the State in which the land was situated had given its consent to the grant. (d) (*Dig. J. A. Gen.*, 627, par. 5.)

The statutory authority relied upon for the purchase of land by a head of a Department should be clear and indisputable. Thus, *held* that authority to purchase additional land for the interment of soldiers could not be derived from the general provision of the annual appropriation act, appropriating a certain sum for maintaining the existing national cemeteries (*Ibid.*, 628, par. 6.)

A statute conferring a specific authority to purchase certain land should, in the

a See G. O. 47 of 1881 for Attorney-General's Regulations as to making deeds, proving title to lands, etc.

b See 7 Opin. Att. Gen., 114, 121; Ex parte Hebard, 4 Dillon 384.

c See this opinion concurred in by an opinion of the Attorney General, in 16 Opins., 414. As statutes specially authorizing the acceptance of donations of land, note the early acts of March 20 and May 9, 1794, and, later, the acts of February 18 1867; March 3, 1875; June 23, 1879. That authority, however, to purchase, and *a fortiori* perhaps, to accept a gift of the necessary land, may be implied from an appropriation act granting a sum of money for a public work requiring for its construction the occupation and use of certain land of an individual or corporation. See opinions of the Attorney-General in 15 Opins., 212; 16 *ibid.*, 119, 387. In the opinion in 16 Opins., 119, it was *held* that where no statutory authority whatever existed for accepting a gift of land a head of a Department would not be justified in accepting the same on the condition that Congress ratify the acceptance and in anticipation of such ratification.

d But under the implied authority contained in section 1838, Revised Statutes, lands required as sites for forts, arsenals, etc., or needful public buildings, may be purchased (or acquired by gift) without the consent of the State, though in the absence of such consent public money can not, in view of the provisions of section 355, legally be expended upon the buildings. (10 Opin. Att. Gen., 35; 15 *ibid.*, 212.)

of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained.<sup>1</sup>

1207. Whenever any lands have been or shall be conveyed to individuals or officers, for the use or benefit of the United States, the President is authorized to obtain from such person a release of his interest to the United States.<sup>2</sup>

Power to obtain releases.  
Apr. 28, 1828, c. 41, s. 3, v. 4, p. 264.  
Sec. 3752, R.S.

1208. That in every case in which the Secretary of the Treasury or any other officer of the Government has been, or hereafter shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be, and hereby is, authorized to acquire the same for the United States by condemnation, under judicial process, whenever in his opinion it is necessary or advantageous to the Government to do so, and the United States circuit or district courts of the district wherein such real estate is

Acquisitions of lands for public uses by condemnation.  
Aug. 1, 1888, v. 25, p. 357.

exercise of the authority, be strictly construed. Thus, where a statute authorized the Secretary of War to purchase, for a certain stated sum, a certain described tract containing a specified number of acres, *held* that the act did not invest him with discretion to purchase a portion only of such tract. (*Ibid.*, par. 7.)

Authority to acquire land in a State, by the exercise of the right of eminent domain, whether by proceedings for condemnation in the United States circuit court or in the courts of the State, (a) can be vested in an executive official of the United States only by express legislation of Congress.

The Constitution vests in Congress the exclusive power to dispose of the property of the United States, real or personal. (b). The Secretary of War, in the absence of authority from Congress, can not alienate land of the United States. Thus, where a company proposed to cut out and remove a part of a dam (some 140 feet) on Fox River, Wisconsin, belonging to the United States, and to substitute another, as a private improvement, below, *held* that this was a proposition for the alienation by an executive official of public property, and could not legally be entertained. *Ibid.*, 630, par. 14.)

In view of the prohibition of section 3736, Revised Statutes that "no land shall be purchased on account of the United States, except under a law authorizing the same," the Secretary of War can not accept a grant by gift of land or of an easement in land, without authority of special statute [By act of April 24, 1888, he is expressly empowered to purchase, or accept donations of, land for river and harbor improvements.] And *held* that, in the absence of authority from Congress, a purchase of lots in a city cemetery for the burial purposes of a neighboring military post, would not be legal or operative. (*Ibid.* par. 15.)

<sup>1</sup>The State of South Carolina ceded to the United States, by an act of its legislature of 1794, the land of the present military reservation at Southport S. C., the site of old Fort Johnson. A condition of the deed of cession was to the effect that a fortification should be erected on the land within three years and be maintained forever thereafter for the public service, or the land should revert to the State. The time allowed was repeatedly extended, the last extension expiring in 1818 when a fortification had been constructed it not fully completed. The fort has long since ceased to be garrisoned. In 1889 an individual citizen "entered" the site as State land. *Held* that this act was without legal authority or effect; that the condition subsequent in the deed was one of the breach of which the grantor, the State, could alone take advantage; and that, as the State had not proceeded to reenter for such breach, the United States was not ousted and could legally continue to hold the premises. (c) (*Ibid.*, par. 18.)

The act of February 27, 1877 (19 Stat. L., 242), contains a requirement "that it shall be the duty of all officers of the United States having any of the title papers (of property purchased, or about to be purchased, for the erection of public buildings) in their possession, to furnish them, forthwith, to the Attorney General. No public money shall be expended until the written opinion of the Attorney-General shall be had."

<sup>2</sup>All papers relating to the Washington Aqueduct and public buildings and grounds in the District of Columbia will be filed in the office of the Chief of Engineers. All other deeds and papers pertaining to the title or sale of, and any lease, grant, license, or easement of, upon, or over any military reservation or other lands under the jurisdiction of the War Department will be filed in the office of the Judge Advocate-General. When any such papers come into the possession of any bureau they shall within five days thereafter be transferred to the office of the Judge Advocate-General. (Par. 704, A. R.)

<sup>a</sup> See *Kohl v. U. S.*, 1 Otto, 367.

<sup>b</sup> 16 Opin. Att. Gen., 477.

<sup>c</sup> See *Schulenberg v. Harriman*, 21 Wall., 44.



Jurisdiction to  
United States  
courts.

located, shall have jurisdiction of proceedings for such condemnation, and it shall be the duty of the Attorney-General of the United States, upon every application of the Secretary of the Treasury, under this act, or such other officer, to cause proceedings to be commenced for condemnation, within thirty days from the receipt of the application at the Department of Justice.<sup>1</sup> *Act of August 1, 1888* (25 Stat. L., 357).

Procedure in  
condemnation.  
Sec. 2, *ibid.*

1209. The practice, pleadings, forms and modes of proceeding in causes arising under the provisions of this act shall conform, as near as may be, to the practice, pleadings, forms and proceedings existing at the time in like causes in the courts of record of the State within which such circuit or district courts are held, any rule of the court to the contrary notwithstanding. *Sec. 2, ibid.*

#### JURISDICTION OVER RESERVATIONS.

Jurisdiction  
over reserva-  
tions; when ex-  
clusive.

Art. I, sec. 1,  
Constitution.

1210. The Congress shall have power:

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.<sup>2</sup> *Article I, section 8, Constitution of the United States.*

<sup>1</sup> The power to take private property for public uses, generally termed the right of eminent domain, belongs to every independent government. It is an incident of sovereignty and requires no constitutional recognition. The provision found in the fifth amendment to the Federal Constitution, and in the constitutions of the several States, for just compensation for property taken, is merely a limitation upon the use of the power. It is no part of the power itself, but a condition upon which the power may be exercised. *U. S. v. Jones*, 109 U. S. 513, 518; *Boom Co. v. Patterson*, 98 U. S. 106; *Kohl v. U. S.*, 91 U. S. 367; *Cooley Con. Lim.*, 526, *U. S. v. Oregon Railway and Nav. Co.*, 16 F. R., 524. In some instances the States, by virtue of their own right of eminent domain, have condemned lands for the use of the General Government, and such condemnations have been sustained by their courts, without, however, denying the right of the United States to act independently of the States. *Kohl v. U. S.*, 91 U. S. 367, 373; *Gilmer v. Lime Point*, 18 Cal., 729; *Burt v. Merchants Ins. Co.*, 106 Mass., 356; *U. S. v. Jones*, 109 U. S. 513. The estate acquired by such exercise of the right of eminent domain on the part of the United States may be a fee simple or may be in the nature of an easement. 16 Op. Att. Gen. 387. The legislature is the judge of the necessity for exercising the right in any case. *Cooley Const. Law*, 527.

<sup>2</sup> Lands may be acquired by the United States, within the territory of a State, in any one of three ways: (1) By purchase without the consent of the legislature of the State within which the lands are situated; (2) by purchase with such consent; (3) by an exercise of the right of eminent domain. *Kohl v. U. S.*, 91 U. S. 367.

When the United States acquire lands within the limits of a State, with the consent of the legislature of the State, for the erection of forts, arsenals, dockyards, and other needful buildings, the Constitution confers upon them exclusive jurisdiction of the tract so acquired; but when they acquire such lands in any other way than by purchase with the consent of the legislature they will hold the lands subject to this qualification; that if upon them forts, arsenals, or other public buildings are erected for the uses of the General Government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the State as would destroy or impair their effective use for the purposes designed. Such is the law with reference to all instrumentalities created by the General Government. Their exemption from State control is essential to the independence and sovereign authority of the United States within the sphere of their delegated powers. But when not used as such

# SALE OF ABANDONED AND USELESS MILITARY RESERVATIONS.

1211. That whenever, in the opinion of the President of the United States, the lands, or any portion of them, included within the limits of any military reservation heretofore or hereafter declared, have become or shall become useless for military purposes, he shall cause the same or so much thereof as he may designate, to be placed under the control of the Secretary of the Interior for disposition as hereinafter provided, and shall cause to be filed with the Secretary of the Interior a notice thereof. *Act of July 5, 1884 (23 Stat. L., 103).*

Sale, etc., of abandoned and useless military reservations.  
July 5, 1884, v. 23, p. 103-4.

instrumentalities, the legislative power of the State will be as full and complete as over any other places within her limits. *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525, 539. Where the absolute title to property remains in the United States, no matter for what purpose it is acquired or held, it is not subject to State or municipal taxation. *Am. and Engl. Ency. of Law*, vol. 25, p. 110, and cases cited.

The purchase of lands in a State by the General Government, with legislative consent, does not, ipso facto, confer upon the General Government exclusive jurisdiction, unless the purchase is for a fort or for some other purpose distinctly named in Article I, § 8, of the Constitution; and in order that exclusive jurisdiction may be acquired over land taken for any other purpose, the act providing therefor and calling for the consent must unequivocally declare that exclusive jurisdiction is intended and necessary, or such necessity must be manifest from the purpose of the act. Accordingly, *held*, that the acts of Congress establishing the National Home for Disabled Volunteer Soldiers, and creating a corporation authorized to take and hold lands for the purpose of such homes, containing no declaration of the necessity of exclusive jurisdiction in the General Government over such lands, do not vest such exclusive jurisdiction in the United States, upon the consent of the State being given to the acquisition of such lands. *In re Kelly*, 71 Fed. Rep., 545.

A cession to the General Government, in the act giving the consent of the State to the purchase of such land, of "jurisdiction," does not confer exclusive jurisdiction, the purpose of the act not requiring it, but such jurisdiction only, concurrent with that of the State, as Congress may find necessary for the objects of the cession. *Ibid.*

Upon lands so ceded for the purpose of a home for disabled volunteers, the criminal laws of the United States, which apply only to places within their exclusive jurisdiction, are not operative. *Ibid.*

A State may cede to the United States exclusive jurisdiction over a tract within its limits in a manner not provided for in the Constitution of the United States; and may prescribe conditions to the cession, if they are not inconsistent with the effective use of the property for the purpose intended. The reservation which has usually accompanied the consent of the States, that civil and criminal process of the State courts may be served in the places purchased, is not considered as interfering in any respect with the supremacy of the United States over them, but is admitted to prevent them from becoming an asylum for fugitives from justice. *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525, 533. Such reservations provide only "that civil and criminal process, issued under the authority of the State, which must, of course, be for acts done and cognizable by the State, may be executed within the ceded lands, notwithstanding the cession." Not a word is said from which we can infer that it was intended that the State should have a right to punish for acts done within the ceded lands. *Ibid.*, 534; *United States v. Cornell*, 2 Mason, 60; *Commonwealth v. Clary*, 8 Mass., 72; *Mitchell v. Tibbetts*, 17 Pick., 298; *People v. Godfrey*, 17 Johns (N. Y.), 225.

Residents within such ceded districts have none of the duties and obligations and none of the rights and privileges of citizens of the States within which such lands are situated. They are not subject to taxation; they can not exercise the right of suffrage. 6 *Opin. Att. Gen.*, 577; 10 *ibid.*, 35; *Sinks v. Reese*, 19 Ohio, 306. They are not entitled to the benefit of the public schools. 1 *Met. (Mass.)*, 580.

An act of the legislature of a State ceding to the United States the jurisdiction of the State over a tract of land used as a military reservation, upon condition that such jurisdiction shall continue only so long as the United States shall own and occupy such reservation; that the State shall have the right, within the reservation, to serve civil process and to execute criminal process against persons charged with crime committed within the State, and that roads may be opened and kept in repair within such reservation, cedes to the United States the entire political jurisdiction of the State over the place in question, including judicial and legislative jurisdiction, except as to service of process and opening roads, and the same can not be affected or further limited, without the consent of the United States, by a subsequent act of the State legislature attempting to impose additional restrictions on the jurisdiction ceded. *In re Ladd*, 74 Fed. Rep., 31.

After such cession a justice of the peace, acting under authority of the State, has no jurisdiction over the ceded territory in matters of alleged criminal violation of the laws of the State committed on such territory. *Ibid.*

It is a general rule of public law, recognized and acted upon by the United States,

Survey and  
subdivision of  
lands.  
Sec. 2, *ibid.*

Appraised.

SEC. 2. That the Secretary of the Interior may, if in his opinion the public interests so require, cause the said lands, or any part thereof, in such reservations, to be regularly surveyed, or to be subdivided into tracts of less than forty acres each, and into town lots, or either, or both. He shall cause the said lands so surveyed and subdivided, and each tract thereof, to be appraised by three competent and disinterested men to be appointed by him, and who shall, after having each been first duly sworn to impartially and faithfully execute the trust reposed in them, appraise the

that whenever political jurisdiction and legislative power over any territory are transferred from one nation or sovereign to another, the municipal laws of the country, that is, laws which are intended for the protection of private rights, continue in force until abrogated or changed by the new government or sovereign. By the cession public property passes from one government to the other, but private property remains as before, and with it those municipal laws which are designed to secure its peaceful use and enjoyment. As a matter of course, all laws, ordinances, and regulations in conflict with the political character, institutions and constitution of the new government are at once displaced \* \* \*. But with respect to other laws affecting the possession, use, and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are of a strictly municipal character, the rule is general that a change of government leaves them in force until, by direct action of the new government, they are altered or repealed. *Chicago and Pacific R. R. v. McGlinn*, 114 U. S., 542, 547; *American Insurance Co. v. Cantor*, 1 Pet., 542; *Halleck Int. Law*, ch. 34, sec. 14.

While after such cession the municipal laws of the State governing property and property rights continue in force in the ceded territory, except so far as in conflict with the laws and regulations of the United States applying thereto, the criminal laws of the State cease to be of force within the ceded territory, and laws regulating the sale of intoxicating liquors, requiring a license therefor, and punishing unlicensed sales, cease to be operative, both as in conflict with the regulations of the United States governing military reservations, and as penal in character. *In re Ladd*, 74 Fed. Rep., 31.

Such cessations are "necessarily temporary, to be exercised only so long as the places continue to be used for the public purposes for which the property was acquired, or reserved from sale." When they cease to be so used, the jurisdiction reverts to the State. *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525, 542.

A lease by the United States to a city for market purposes, of vacant land which was a part of land ceded by the State to the United States for the purposes of a navy-yard and naval hospital, with a provision that the United States may retain such use and jurisdiction no longer than the premises are used for such purposes, operates, at least while the lease is in force, to suspend the exclusive authority and jurisdiction of the United States over the leased land, and thereby makes it subject to the jurisdiction of State courts in an action for ouster therefrom. *Palmer v. Barrett*, 162 U. S., 399. The character and purposes of the occupation of a reservation having been officially and legally established by that branch of the Government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put. *Benson v. U. S.*, 146 U. S., 331.

Over lands reserved for military or other governmental purposes in the Territories the jurisdiction of the United States is necessarily paramount. When a Territory is admitted as a State it is within the power of Congress to stipulate for the power of exclusive jurisdiction over such reservations, or to except them from the jurisdiction of the State. Failing to do this, however, the State can exercise such authority and jurisdiction over them as over similar property held by private individuals; and the United States can acquire exclusive jurisdiction only when the same has been formally ceded by the legislature of the State in which the lands are situated. *Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525. Lands acquired by the United States for public uses, by purchase with the consent of the States, or by an exercise of the right of eminent domain, are not public lands, that term applying only to "such lands as are subject to sale or other disposition under general laws." *Newhall v. Sanger*, 92 U. S., 761.

When an act admitting a State into the Union, or organizing a Territorial government, provides that the lands in possession of an Indian tribe shall not be a part of such State or Territory, the new government has no jurisdiction over them. *Langford v. Monteith*, 102 U. S., 145. For an example of such a reservation on the part of Congress in the admission of a State into the Union, see the act of July 10, 1890 (26 Stat. L., 222), admitting the State of Wyoming.

"Jurisdiction over territory in a State may be acquired by the United States, under the seventeenth clause of section 8 of Article I of the Constitution, by the purchase of such territory, with the consent of the State, 'for the erection of forts, magazines, arsenals, dockyards, and other needful buildings.' The Constitution gives Congress the power of exercising exclusive legislation over such place, and this is held to mean exclusive jurisdiction. The State's consent to the purchase for any one of these constitutional purposes invests the United States with exclusive jurisdiction, and the State can not, even by the express language of its legislation, reserve to

said lands, subdivisions, and tracts, and each of them, and report their proceedings to the Secretary of the Interior for his action thereon. If such appraisement be disapproved, the Secretary of the Interior shall again cause the said lands to be appraised as before provided; and when the appraisement has been approved he shall cause the said lands, subdivisions, and lots to be sold at public sale, to the highest bidder for cash, at not less than the appraised value thereof, nor less than one dollar and twenty-five cents per acre, first having given not less than sixty

Lands at public sale.  
Conditions of sale.

itself any part of this jurisdiction. (The reservation of the right of serving process for causes of action arising outside such territory is not held to be an actual reservation of a part of the exclusive jurisdiction intended to be vested in the United States.) But it would seem that this is only true when the purchase is for one of the constitutional purposes. By correct construction, "other needful buildings" would mean buildings of the same character as those specified—buildings intended for military or defensive purposes. A more comprehensive meaning has, indeed, been sometimes given to the expression, but no justification for such construction is found.<sup>a</sup>

"Section 355 of the Revised Statutes is in part based on the clause of the Constitu-

<sup>a</sup> In Pinckney's draft of a constitution there was this clause: "To provide such dockyards and arsenals and erect such fortifications *as may be necessary* for the United States, and to exercise exclusive jurisdiction therein." (This draft was submitted May 29, 1787.)

There was no corresponding provision in the Constitution reported by the committee of detail (August 6), but the committee of eleven, by report of September 5, recommended the adoption of the clause as it now reads, except that it did not have the words "by the consent of the legislature of the State." In the debate on the proposition "Mr. Gerry contended that this power might be made use of to enslave any particular State by buying up its territory, and that the *strongholds proposed* would be a means of awing the State into an undue obedience to the General Government. Mr. King thought himself the provision unnecessary, the power being already involved; but would move to insert, after the word 'purchased,' the words 'by the consent of the legislature of the State.' This would certainly make the power safe." (5 Elliot's Debates, 511.)

And in *The Federalist* (No. 43) it is remarked: "Nor would it be proper for the places on which the security of the entire Union may depend to be in any degree dependent on a particular member of it."

So Story says (§ 1224):

"The other part of the power, giving exclusive legislation over places ceded for the erection of forts, magazines, etc., seems still more necessary for the public convenience and safety. The public money expended on such places, and the public property deposited in them, and the nature of the military duties which may be required there, all demand that they should be exempted from State authority. In truth, it would be wholly improper that places on which the security of the entire Union may depend should be subjected to the control of any member of it. The power, indeed, is wholly unexceptionable, since it can only be exercised at the will of the State; and therefore it is placed beyond all reasonable scruple. Yet it did not escape without the scrutinizing jealousy of the opponents of the Constitution, and was denounced as dangerous to State sovereignty."

And, as observed by Judge Seaman (in re Kelly, 71 Fed. Rep., 545, 549):

"The rule thus stated, whereby legislative consent operates as a complete cession, is applicable only to objects which are specified in the above provision, and can not be held to so operate, ipso facto, for objects not expressly included therein. Whether it rests in the discretion of Congress to extend the provision to objects not specifically enumerated, although for national purposes, upon declaration as 'needful buildings,' and thereby secure exclusive jurisdiction, is an inquiry not presented by this legislation; and I think it can not be assumed by way of argument that such power is beyond question. In *New Orleans v. U. S.*, 10 Pet., 662, 737, the opinion of the Supreme Court is expressed by Mr. Justice McLean, without dissent, as follows:

"Special provision is made in the Constitution for the cession of jurisdiction from the States over places where the Federal Government shall establish forts or other military works. And it is only in these places, or in the Territories of the United States, where it can exercise a general jurisdiction."

"And in *U. S. v. Bevens*, 3 Wheat., 336, 390, the claim was urged that the words 'other place' would include a ship of war of the United States lying at anchor in Boston Harbor, and bring it within the statute defining murder committed 'within any fort, arsenal, dockyard, magazine, or in any other place or district of country under the sole jurisdiction of the United States;' but it was stated by the court, through Chief Justice Marshall, that 'the construction seems irresistible that by the words "other place" was intended another place of a similar character with those previously enumerated; that 'the context shows the mind of the legislature to have been fixed on territorial objects of a similar character.' See also *The Federalist*, No. 43, by Madison."

days' public notice of the time, place, and terms of sale, immediately prior to such sale, by publication in at least two newspapers having a general circulation in the country or section of county where the lands to be sold are situate; and any lands, subdivisions, or lots remaining unsold may be reoffered for sale at any subsequent time in the same manner, at the discretion of the Secretary of the Interior; and if not sold at such second offering for want of bidders, then the Secretary of the Interior may sell the same at private sale, for cash, at not less than the appraised value, nor less than one dollar and twenty-five cents per acre: *Provided*, That any settler who was in actual occupation of any portion of any such reservations prior to the location of such reservation, or settled thereon prior to January first, eighteen hundred and eighty-four, in good faith for the purpose of securing a home and of entering the same under the general laws and has continued in such occupation to the present time, and is by law entitled to make a homestead entry shall be entitled to enter the land so occupied, not exceeding one hundred and sixty acres in a body, according to the Government surveys and subdivisions: *Provided further*, That said lands were subject to entry under the public land laws at the time of their withdrawal: *And provided further*, That all patents heretofore issued, and approved State selections, covering any lands within the old Fort Lyon Military Reservation, in the State of Colorado, declared by executive order of August eighth, eighteen hundred and sixty-three, are hereby confirmed; and the rights of all entrymen and settlers on said reservation to acquire title under the homestead, preemption, or timber culture laws are hereby recognized and affirmed to the extent they would have attached had public lands been settled upon or entered; and such

Rights of actual settlers.

Fort Lyon Military Reservation.

Rights of settlers, etc.

tion referred to, and in part not. The consent of the State to a purchase, given in order to satisfy the requirement of this section, would invest the United States with exclusive jurisdiction, if the purchase be for one of the constitutional purposes; but the section provides for other purposes also, and as to these it would seem that a simple consent to the purchase (assuming that such consent, being for a purpose not falling under the clause of the Constitution, amounts to a cession of jurisdiction) would only carry with it so much jurisdiction as would be necessary for the purpose of the purchase. Probably this would be held to be concurrent jurisdiction. Taking into consideration the fact that States can not, under any circumstances, interfere with the instrumentalities of the Government of the United States, it may, indeed, be questioned whether, even under this view, unnecessary precautions have not been taken in regard to the acquisition of jurisdiction; and certainly it can not be presumed that a State intends to part with more of its sovereignty than is necessary. A consent to the purchase, under section 355, Revised Statutes, if the purchase be for other than one of the purposes described in the clause of the Constitution, may, therefore, be accompanied with any limitations not interfering with an instrumentality of the Government of the United States.

"The most common way of acquiring jurisdiction, however, is by the State's expressly ceding it to the United States. In such case the State may make similar limitations, and this even if the place be used by the United States for one of the purposes mentioned in the clause of the Constitution. To bring the case under the clause there must be a purchase with consent. (*Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 539; *In re Kelly*, 71 F. R., 545.)" (J. A. G.)

portions of said reservation as shall not have been entered or settled upon as aforesaid shall be disposed of by the Secretary of the Interior under the provisions of this act, including lands that may be abandoned by settlers or entrymen. *Sec. 2, ibid.*

SEC. 3. That the Secretary of the Interior shall cause any improvements, buildings, building materials, and other property which may be situate upon any such lands, subdivisions or lots not heretofore sold by the United States authorities, to be appraised in the same manner as hereinbefore provided for the appraisements of such lands, subdivisions, and lots, and shall cause the same, together with the tract or lot upon which they are situate, to be sold at public sale, to the highest bidder for cash, at not less than the appraised value of such land and improvements, first giving the sixty days' notice as hereinbefore provided; or he may, in his discretion, cause the improvements to be sold separately, at public sale for cash, at not less than the appraised value, to be removed by the purchaser within such time as may be prescribed, first giving the sixty days' public notice before provided; and if in any case the lands and improvements, or the improvements separately, as the case may be, are not sold for want of bidders, then the Secretary of the Interior may, in his discretion, cause the same to be reoffered for sale, at any subsequent time, in the same manner as above provided, or may cause the same to be sold at private sale for not less than the appraised value: *Provided*, That where buildings or improvements have been heretofore sold by the United States authorities the land upon which such buildings or improvements are situate not exceeding the smallest subdivision or lot provided for by this act upon the reservation on which said buildings are situate shall be offered for sale to the purchaser of said improvements and buildings at the appraised value of the lands and if said purchaser shall fail for sixty days after notice to complete said purchase of lands the same shall be sold under the provisions of this act: *And provided further* That the proceeds of the military reservation lands sold on Bois Blanc Island near to Fort Mackinaw military reservation shall be set apart as a separate fund for the improvement of the National Park on the Island of Mackinaw Michigan under the direction of the Secretary of War. *Sec. 3, ibid.*

Portions of reservation, etc.; disposal of.

Appraisement of buildings, etc., and public sale. *Sec. 3, ibid.*

Conditions of sale.

Lands to be first offered to owners of buildings and improvements.

Proceeds of sale of lands on Bois Blanc Island set apart for improvement of National Park, etc. 11 Stat., 87.

SEC. 4. That the provisions of the act of August eighteenth, eighteen hundred and fifty-six, relative to military reservations in the State of Florida, and the sixth section

11 Stat., 336. Military reservations in Florida.

of the act of June twelfth, eighteen hundred and fifty-eight, relative to the sale of military sites be, and the same are hereby, repealed. *Sec. 4, ibid.*

Lands containing mineral deposits subject to mineral land laws of United States.

SEC. 5. Whenever any lands containing valuable mineral deposits shall be vacated by the reduction or abandonment of any military reservation under the provisions of this act, the same shall be disposed of exclusively under the mineral land laws of the United States. *Sec. 5, ibid.*

Secretary of War may grant certain privileges; erection of bridges, extension of roads, etc.

SEC. 6. The Secretary of War shall have authority, in his discretion, to permit the extension of State, county, and Territorial roads across military reservations; to permit the landing of ferries, the erection of bridges thereon; and permit cattle, sheep or other stock animals to be driven across such reservation, whenever in his judgment the same can be done without injury to the reservation or inconvenience to the military forces stationed thereon. *Sec. 6, ibid.*

Lands opened to entry.  
V. 23, p. 103.  
Aug. 23, 1894,  
v. 28, p. 491.

1212. That all lands not already disposed of included within the limits of any abandoned military reservation heretofore placed under the control of the Secretary of the Interior for disposition under the Act approved July fifth, eighteen hundred and eighty-four, the disposal of which has not been provided for by a subsequent Act of Congress, where the area exceeds five thousand acres, except such legal subdivisions as have Government improvements thereon, and except also such other parts as are now or may be reserved for some public use, are hereby opened to settlement under the public-land laws of the United States, and a preference right of entry for a period of six months from the date of this Act shall be given all bona fide settlers who are qualified to enter under the homestead law and have made improvements and are now residing upon any agricultural lands in said reservations, and for a period of six months from the date of settlement when that shall occur after the date of this Act: *Provided*, That persons who enter under the homestead law shall pay for such lands not less than the value heretofore or hereafter determined by appraisement, nor less than the price of the land at the time of the entry, and such payment may, at the option of the purchaser, be made in five equal installments, at times and at rates of interest to be fixed by the Secretary of the Interior. *Act of August 23, 1894 (28 Stat. L., 491).*

Preferences to homestead settlers.

Payments.

Appraisements, etc.  
Sec. 2, *ibid.*

1213. That nothing contained in this Act shall be construed to suspend or to interfere with the operation of the said Act approved July fifth, eighteen hundred and eighty-four, as to all lands included in abandoned military

reservations hereafter placed under the control of the Secretary of the Interior for disposal, and all appraisements required by the first section of this Act shall be in accordance with the provisions of said Act of July fifth, eighteen hundred and eighty-four. *Sec. 2, ibid.*

1214. That the provisions of the Act approved August twenty-third, eighteen hundred and ninety-four, entitled "An Act to provide for the opening of certain abandoned military reservations, and for other purposes," are hereby extended to all abandoned military reservations which were placed under the control of the Secretary of the Interior under any law in force prior to the Act of July fifth, eighteen hundred and eighty-four. That the preference right of entry given to actual settlers by the terms of the act to which this is an amendment shall, so far as the lands to which the provisions of said Act are extended, take effect and continue for six months from the date of this amendatory Act. *Act of February 15, 1895 (28 Stat. L., 664).*

Preference to homestead settlers.

Feb. 15, 1895, v. 28, p. 664.

#### LEASES OF PUBLIC PROPERTY NOT REQUIRED FOR PUBLIC USE.

1215. That authority be, and is hereby, given to the Secretary of War, when in his discretion it will be for the public good, to lease, for a period not exceeding five years and revocable at any time, such property of the United States under his control as may not for the time be required for public use and for the leasing of which there is no authority under existing law, and such leases shall be reported annually to Congress: *Provided*, That nothing in this act contained shall be held to apply to mineral or phosphate lands.<sup>1</sup> *Act of July 28, 1892 (27 Stat. L., 321).*

Secretary of War may lease public property not required for use.

July 28, 1892, v. 27, p. 321.

Mineral, etc., lands excepted.

<sup>1</sup> A license is an authority, revocable at pleasure, to do a particular act or series of acts upon the land of another without possessing an estate therein. (*Morgan v. U. S.*, 14 C. Cls. R., 319.) See also *Dig. J. A. Gen.*, 476-480.

The Constitution (Art. IV, sec. 3, par. 2) provides that "The Congress shall have power to dispose of, and make all needful rules and regulations respecting, the territory or other property belonging to the United States." The scope of this provision is most comprehensive, the authority conferred thereby upon the legislative branch of the Government being held to extend from the formation of a territorial government to the matter of the sale of a small amount of personalty. That neither land nor any interest in land of the United States can be sold or otherwise disposed of by the head of an Executive Department or other executive official, or by a military officer, without the authority of Congress is settled law. (a)

In the absence of such authority, the lands of the United States, whether held by original proprietorship or acquired by purchase or gift, or by conquest, can not, even for a purely benevolent or religious purpose, be given away, any more than they can be transferred for a valuable consideration. Nor without such authority can they

a This fundamental rule of our public law is expressed by Attorney-General Hoar (13 Opins., 46) as follows: "I am clearly of opinion that the Secretary of War can not convey to any person any interest in land belonging to the United States, except in pursuance of an act of Congress expressly or impliedly authorizing him to do so." And see *United States v. Nichols*, 1 Paine, 646 (cited post); *Seabury v. Field*, *McAlister*, 1; *United States v. Hare*, 4 Sawyer, 653, 669.



## MILITARY POSTS.

Par.

1216. Permanent barracks.

1217. No contract to exceed appropriation.

1218. Expenditures exceeding \$500 to be made by contract.

1219. Trading establishments.

1220. Post traders.

Par.

1221. Vacancies not to be filled.

1222. Post schools.

1223. Post bakeries.

1224. Post exchanges.

1225. Sale of alcoholic liquors restricted.

Permanent barracks.

Sec. 1136, R. S.

**1216.** Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress, and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed twenty thousand dollars, shall be erected unless by special

be conveyed temporarily by lease, whether for a short or long term. (a) (Dig. J. A. Gen., 623, par. 1.)

Nor, without authority from Congress, can an Executive Department or officer convey away any usufructuary interest in land of the United States. Thus it has been repeatedly held by the Judge-Advocate-General that the Secretary of War (or a military commander) was not empowered, of his own authority, to grant a right of way over a military reservation to a railroad company or other corporation, and in numerous statutory enactments such a right has been expressly given by Congress as the only authority competent for the purpose.

And such rights when given can be exercised only within the terms of the grant. Thus where by an act of Congress there was granted to a railroad company a limited and defined right of way across a military reservation (occupied by a military post), *held* that the company was authorized simply to construct a track or roadway, and was not empowered to put up depots, stock yards, cattle pens, or other erections upon the land, or to appropriate land otherwise than for the roadway. (b)

So *held* that the Secretary of War could not, of his own authority, grant, in consideration of the payment of toll to the United States, a right of way over a bridge belonging to the United States. So *held* that the Secretary could not legally grant to a company or individual the right to erect and maintain for an indefinite period a hotel on the military reservation at Sandy Hook. (c) So *held* that the Secretary would not be authorized to transfer a lot belonging to the United States in Washington to the Commissioners of the District of Columbia for the erection of a hospital. So *held* that neither the Secretary of War nor a department commander could grant to an individual or individuals the exclusive right to use for an indefinite period certain water power belonging to the United States, nor the exclusive right to mine the soil of a military reservation for a certain term of years, nor a similar right to make and maintain for an indefinite period ditches through a portion of such a reservation for the purpose of irrigating the lands of private parties, nor the right annually to enter upon and occupy a military reservation and cut and possess the hay crop growing thereon, (d) nor the right permanently or indefinitely to occupy and use a portion of a reservation for a burying ground. (Ibid., 624.)

*Held*, however, that a distinction was to be observed between a grant of a usufructuary interest in land and a revocable license not involving a transfer of such

a See *Friedman v. Goodwin*, 1 McAllister, 148, where a lease made by the post commander at San Francisco of a part of a "Government reserve," though approved by the military governor of the then Territory, and also by the Secretary of the Interior, was held void because not authorized by Congress. The court declares the "utter impotency of any attempt by an officer of the Government to alien any land, the property of the United States, without the authority of an act of Congress;" adding that "the President with the heads of the Departments combined" could not effect such an object. And see 4 Opins. Att. Gen., 480; 9 *ibid.*, 476; 13 *ibid.*, 46; *United States v. Hare*, 4 Sawyer, 670-671. In the last case the court say: "The Secretary of the Treasury can not execute or approve of a lease of any property belonging to the United States without special authority of law."

b See this opinion affirmed by the Attorney-General in 14 Opins., 135.

c See confirmatory opinion of the Attorney-General in 16 Opins., 205. In this case there was the further objection that the State of New Jersey, in ceding to the United States jurisdiction over the premises, by deed of March 10, 1846, had expressly declared that the grant was "for military purposes;" adding "and the said United States shall retain such jurisdiction so long as the said tract shall be applied to the military or public purposes of the said United States, and no longer."

d A fortiori in regard to growing timber. See *Spencer v. United States*, 10 C. Cls. R., 255.

authority of Congress. It shall be the duty of all officers of the United States having any of the title-papers (property purchased, or about to be purchased, for erection of public buildings) in their possession, to furnish them forthwith to the Attorney-General. No public money shall be expended until the written opinion of the Attorney-General shall be had.

Title papers.  
Sec. 1136, R. S.

1217. No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose.<sup>1</sup>

No contract to exceed appropriation.

July 25, 1868, c. 233, s. 3, v. 15, p. 177.

Sec. 3733, R. S.

1218. That hereafter no expenditures exceeding five hundred dollars shall be made upon any building or military post,<sup>2</sup> or grounds about the same, without the approval of the Secretary of War for the same, upon detailed estimates

Expenditures exceeding \$500.

July 5, 1884, v. 23, p. 111; Feb. 27, 1893, v. 27, p. 484.

an interest. (a) Thus held that the Secretary of War would be authorized to permit a telegraph company to erect posts upon a military reservation and attach to the same telegraph wires, subject to their being removed at the will of the Government, if found to interfere with the purposes for which the reservation was established. So held that a municipal corporation might legally be permitted by the Secretary of War to lay water pipes in the soil of the arsenal grounds at Springfield, Mass., the same being equally for the benefit of the military authorities and the citizens, and subject to removal at the will of the Government. And held that a post trader might legally be licensed by the Secretary of War to erect the buildings necessary for his business upon the land of the post for which he was appointed. (b) But held that the Secretary of War was not empowered to accede to the application of an individual to establish a ferry across a river within the limits of a military reservation, where what was asked was not a mere license revocable at the will of the Secretary, but a permanent franchise and grant of an exclusive usufructuary interest in the premises, including even the right to charge tolls to the United States. And similarly held in a case of an application to be permitted to erect and maintain a permanent bridge across a river forming a boundary of a military reservation, one end of which was to be built upon the soil of the reservation, the application contemplating not a mere license revocable at the will of the Government, but a permanent right of property in the bridge, involving an easement in the land. (Ibid., 625.)

<sup>1</sup> The custody of a public building, in the absence of a statute, an appropriation, a regulation, or the order of the head of an Executive Department, is vested in the officer having it in his official possession. (Gray v. U. S., 23 C. Cls. R., 323.)

<sup>2</sup> A military station is merely synonymous with the term "military post," and means a place where troops are assembled; where military stores, animate and inanimate, are kept and distributed; where military duty is performed or military protection afforded; where something, in short, more or less closely connected with arms or war is kept or is to be done. (Phisterer v. U. S., 12 C. Cls. R., 98, 107.)

#### POSTS.

Permanent military posts are established under the direction of the Secretary of War, by whom their names will be designated. (Par. 198, A. R., 1895.)

Permanent posts will be styled "Forts," and points occupied temporarily by troops, "Camps." (Par. 199, *ibid.*)

The commander of a post is responsible for its safety and defense, and for the discipline, drill, and tactical instruction of his command, to which ends all other garrison duties will be made subservient. He will be responsible for the preservation and proper application of public property, for the strict enforcement of laws and regulations, and for the proper condition of quarters and defenses. He will make an inspection of his command on the last day of every month, will satisfy himself by frequent personal examination that the disbursements of all officers in charge of funds are in accordance with law and regulations and their accounts correctly stated, and will make such reports of these inspections and examinations as the department commander may direct. (Par. 200, *ibid.*)

The staff of a post commander will consist of such staff officers as are on duty at the post and such line officers as may be required for staff duties. Their official designations will be as follows: Adjutant, quartermaster, commissary, surgeon,

<sup>a</sup> See this distinction recognized in opinions of the Attorney-General of October 1 and November 22, 1878 (16 Opins., 152, 205), in the former of which it was held that the Secretary of the Navy was not empowered to authorize the city of Chelsea, Mass., to continue one of its main sewers through the grounds of the United States Naval Hospital.

<sup>b</sup> See 14 Opin. Att. Gen., 125.

by the Quartermaster's Department; and the erection, construction, and repair of all buildings and other public structures in the Quartermaster's Department shall, as far as may be practicable, be made by contract, after due legal advertisement.<sup>1</sup> *Act of February 27, 1893 (27 Stat. L., 484).*

#### POST TRADERS.

Trading establishments.  
July 15, 1870, c. 294, s. 22, v. 16, p. 319.  
Sec. 1113, R. S.

1219. The Secretary of War is authorized to permit one or more trading establishments to be maintained at any military post on the frontier not in the vicinity of any city or town, when he believes such an establishment is needed for the accommodation of emigrants, freighters, or other citizens. The persons to maintain such establishments shall be appointed by him, and shall be under protection and control as camp-followers.<sup>2</sup>

Post traders.  
Sec. 3, July 24, 1876, v. 19, p. 100.

1220. That every military post may have one trader, to be appointed by the Secretary of War, on the recommendation of the council of administration, approved by the commanding officer who shall be subject in all respects to the

assistant surgeon, engineer officer, ordnance officer, and signal officer. (Par. 203, *ibid.*)

The official address of the senior medical officer at a post will be—

*The Surgeon, Fort ———.*

and in like manner the official addresses of the other staff officers of a post will be, respectively: The Adjutant, The Quartermaster, The Commissary, The Engineer Officer, The Ordnance Officer and The Signal Officer, Fort ———. (Dec. Act. Sec. War, Dec. 11, 1895. 29456 A. G. O., 1895. Circular No. 2, A. G. O., 1896.)

Expenditures of labor, money, or material upon posts will be strictly limited to the amounts allowed by law and regulations. (Par. 204, A. R., 1895.)

When practicable, temporary buildings for the use of the Army will be erected by its enlisted force, and necessary repairs of public buildings at garrisoned posts not appropriated for or specially authorized will be made by the troops. (Par. 205, *ibid.*)

In case of emergency, when reference to higher authority is impracticable, department commanders may order the purchase of material and engagement of services necessary for the preservation of public buildings or property, not to exceed in amount \$500 for any post, but no greater sum will be expended without the sanction of the Secretary of War. (Par. 206, *ibid.*)

Post commanders are authorized to assist mail contractors with Government transportation, provided it can be spared without detriment to the service, when through accident or unavoidable casualty, they are deprived of the means necessary to fulfill their contracts. Such assistance must cease as soon as the contractor can by exercise of proper diligence, resupply himself with transportation. Receipts for the property loaned will be taken, which in the event of its loss or damage will be forwarded, with a report of facts, to the Adjutant-General of the Army, the amount involved may be collected from the contractor through the Post-Office Department. (Par. 207, *ibid.*)

At posts supplied with ordnance and with ammunition for the purpose, a morning and evening gun will be fired daily at reveille and retreat. (Par. 208, *ibid.*)

#### POST RECORDS.

The following books of record will be kept at each post: An order book, a letters-received book, an index book for letters received, a letters-sent book, an index book for letters sent, a post council of administration book, furnished by the Quartermaster's Department; a morning report book, and a guard report book, furnished by the Adjutant-General of the Army; a post exchange council book, provided by the post exchange. All copies of all returns and reports rendered, if not contained in the book of orders received, letters sent, all letters received which are not required to be returned; in fine, all official papers which relate to post administration, and which are required to be kept at the post, will be filed and preserved as a part of the post records. The records will not be removed from the post except on its discontinuance. Commanding officers will see that the records are accurately kept and are properly transferred to their successors. (Par. 209, *ibid.*)

<sup>1</sup> This provision was repeated in the annual acts of appropriation from that of July 5, 1884, to that of February 27, 1893 (27 Stat. L., 484).

<sup>2</sup> But see paragraph 1221, post, for the requirement of the act of January 28, 1893, that traderships, as they become vacant, are not to be filled.

rules and regulations for the government of the Army.<sup>1</sup>

*Sec. 3, act of July 24, 1876 (19 Stat. L., 100).*

1221. That where a vacancy now exists or hereafter occurs in the position of post trader at any military post it shall not be filled, and the authority to make such appointment is hereby terminated: *Provided*, That in the event of the death of a post trader his personal representative shall be allowed by the Secretary of War a reasonable time in which to close the business. *Act of January 28, 1893 (27 Stat. L., 426).*

Vacancies not to be filled.  
Jan. 28, 1893, v. 27, p. 426.

#### POST SCHOOLS.

1222. Schools shall be established at all posts, garrisons, and permanent camps at which troops are stationed, in which the enlisted men may be instructed in the common English branches of education, and especially in the history of the United States; and the Secretary of War may detail such officers<sup>2</sup> and enlisted men as may be necessary to carry out this provision. It shall be the duty of the post or garrison commander to set apart a suitable room or building for school and religious purposes.

Post schools.  
Sec. 27, July 28, 1866, v. 14, p. 336.  
Sec. 1231, R. S.

#### POST BAKERIES.

1223. That for the current fiscal year and thereafter there may be expended from the appropriation for regular supplies the amounts required for the necessary equipments of the bake-house to carry on post bakeries; for the necessary furniture, text-books, paper and equipments of the post schools; for the tableware and mess furniture for kitchens and mess halls; \* \* \* each and all for use of the enlisted men of the Army.<sup>3</sup> *Act of June 30, 1890 (26 Stat. L., 152).*

Post bakeries, schools, kitchens, gardens, etc.  
June 13, 1890, v. 26, p. 152.

#### POST EXCHANGES.

1224. That hereafter no money appropriated for the support of the Army shall be expended for post gardens or exchanges; but this proviso shall not be construed to prohibit the use, by post exchanges, of public buildings or public transportation when, in the opinion of the Quartermaster General, not required for other purposes. *Act of July 16, 1892 (27 Stat. L., 178).*

Post exchanges and post gardens.  
July 16, 1892, v. 27, p. 178.

<sup>1</sup>But see paragraph 1221, post, for the requirement of the act of January 28, 1893, that traderships, as they become vacant, are not to be filled.

<sup>2</sup>For statutory duties of post and regimental chaplains in respect to post schools see the chapter entitled POST CHAPLAINS. For regulations in regard to post schools see paragraphs 317-324, Army Regulations of 1895. For provisions of statutes respecting text-books, supplies of paper, etc., see paragraph 1223, post.

<sup>3</sup>For regulations in respect to the management and administration of post bakeries see paragraphs 304-309, Army Regulations of 1895.

Sale of alcoholic  
liquors, etc., re-  
stricted.  
June 13, 1890, v.  
26, p. 154.

**1225.** That no alcoholic liquors, beer or wine, shall be sold or supplied to the enlisted men in any canteen, or post trader's store, or in any room or building at any garrison or military post, in any State or territory in which the sale of alcoholic liquors, beer or wine is prohibited by law.<sup>1</sup> *Act of June 13, 1890 (26 Stat. L., 154).*

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<sup>1</sup> It was held by the United States circuit court in and for the district of Nebraska (In re Ladd; 74 Fed. Rep., 31, decided in May, 1896) that the State of Nebraska was without jurisdiction to enforce an excise law of the State (act of March 29, 1889) in and upon the military reservation of Fort Robinson, Nebr.; jurisdiction over the same having been ceded to the United States in March, 1887.

The post exchange (formerly the canteen) is an association, or soldiers' club, owning and operating a cooperative store. It is not, and never was, in any sense a trader within the meaning of the acts of July 24, 1876, and June 30, 1882, and has no lien on the soldier's pay. The accounting officers have no duty to perform in connection with the claims or accounts of any post exchange, unless they are involved in the improper disbursement of Government funds. (2 Compt. Dec., 56.)

## CHAPTER XXXIII.

### THE PUBLIC PROPERTY.

Par.		Par.	
1226.	Power to acquire and dispose of property vested in Congress.	1231.	Contents of certificate.
1227.	Purchase, safe-keeping, transportation, and distribution of supplies.	1232.	Methods of making returns not affected.
1228.	Captured stores to be secured.	1233.	Regulations by heads of Departments.
1229.	Accountability of company commanders.	1234.	Deficiencies.
1230.	Property returns. Certificates of loss to be forwarded to Treasury accounting officers.	1235.	Damage to arms.
		1236.	Sales of stores.
		1237.	Administration of oaths in accounting.

1226. The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.<sup>1</sup>

Power to acquire and dispose of property vested in Congress.  
Art. IV, sec. 3, Constitution.

*Constitution, Art. IV, sec. 3.*

<sup>1</sup>See note to paragraph 1215, ante.

The provision of the Constitution in regard to the disposition of public property applies to personalty equally as to realty. Thus no Executive Department or officer can be empowered, except by the authority of Congress, to dispose of personal property of the United States. (a) So, *held* that, in the absence of such authority, a military commander could not legally dispose of temporary buildings—not “fixures”—erected upon a military reservation. So, *held* that the Secretary of War would not be authorized, in the absence of enabling legislation, to sell or negotiate the bonds or promissory notes made to the United States by certain railroad companies, in consideration of rolling stock, etc., sold and transferred to the same. And similarly *held* as to the authority of the Secretary to dispose of articles of inferior value, not impliedly authorized to be sold by section 1316, Revised Statutes. And *held* that the fact that certain valuable public property was perishable and liable to waste was not legally sufficient to justify the sale in the absence of statutory authority. *Held* that the Cavalry Tactics, a work prepared under the orders of the Secretary of War by a board of officers, was the property of the United States, and therefore could not, without the authority of Congress, be disposed of to a bookseller.

<sup>a</sup>The leading case on this point is *United States v. Nichols*, 1 Paine (U. S. Circ. Ct. R., 646), in which it was held that a sale or loan, by the commandant of an arsenal of a quantity of lead belonging to the United States was illegal and invalid. The court say: “The Constitution declares that ‘Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.’ No public property can therefore be disposed of without the authority of law, either by an express act of Congress for that purpose or by giving the authority to some Department or subordinate agent. No law has been shown authorizing the sale of this lead, nor is any such authority to be inferred from the general power vested in any of the Departments of the Government. The power, if lodged anywhere, would seem most appropriately to belong to the War Department; but there is no such express or implied power in that Department to sell the public property put under its management.” And see the same principle recognized in an opinion of the Attorney-General (in 16 Opins., 477), in which it is held that the Secretary of War was not empowered to sell arms to a State in the absence of authority from Congress.

Purchase, safe-keeping, transportation, and distribution of supplies.

Mar. 3, 1813, c. 48, s. 5, v. 2, p. 817.  
Sec. 219, R. S.

**1227.** The Secretary of War shall from time to time define and prescribe the kinds as well as the amount of supplies to be purchased by the Subsistence and Quartermaster Departments of the Army, and the duties and powers thereof respecting such purchases; and shall prescribe general regulations for the transportation of the articles of supply from the places of purchase to the several armies, garrisons, posts, and recruiting places, for the safe-keeping of such articles, and for the distribution of an adequate and timely supply of the same to the regimental quartermasters, and to such other officers as may by virtue of such regulations be intrusted with the same; and shall fix and make reasonable allowances for the store-rent and storage necessary for the safe-keeping of all military stores and supplies.<sup>1</sup>

Captured stores to be secured.  
9 Art. War.

**1228.** All public stores taken from the enemy shall be secured for the service of the United States; and for neglect thereof the commanding officer shall be answerable.  
*Ninth Article of War.*

with a view to its publication and sale by him on his private account. (Dig. J. A. Gen., 626, par. 4.)

*Held* that the provision of section 3618, Revised Statutes—requiring that "all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind," shall, with certain exceptions specified, be deposited and covered into the Treasury as miscellaneous receipts, and not withdrawn except by the authority of a statutory appropriation—applied to the proceeds of the surplus cuttings of material for clothing manufactured by the Quartermaster Department of the Army, the same not being within any of the designated exceptions; and therefore that the proceeds of such cuttings could not legally be retained and used in the business of that department. (Ibid., 630, par. 13.)

Temporary buildings only erected by military orders on land of the United States at a military post, to serve a temporary purpose, are in general personal property of the United States which may be removed by the direction or authority of the Secretary of War. (a) But if the same be permanent structures and real estate, the authority of Congress is necessary to their removal. (Ibid., 631, par. 19.)

The United States, being tenant of land leased for military purposes at Fort Davis, Tex., erected buildings thereon for the purposes of a military post. In view of the fact that the relation was that of landlord and tenant, that the buildings were erected for a purpose analogous to that of trade, and for a public use, and that in their erection there could certainly have been no intention to benefit the inheritance or add to the freehold—*held* that such buildings were to be regarded, not as fixtures, but as personal property, and removable by the tenant at any time before the expiration of his lease. Should the Government sell the buildings standing, the purchaser would have the same right of disposition as the United States, and no more. He would therefore be obliged to remove them before the termination of the lease, unless otherwise permitted by the owner of the premises. And *held* similarly of like buildings erected at Fort Union, N. Mex., where the United States was tenant at will; the buildings not being intended as improvements, but merely for the use of the troops. (Ibid., 632, par. 20.)

Where a post commander, without authority, took possession of land of the United States for the purpose of erecting thereon a building for his personal use, and having erected it assumed to hold and dispose of it as his own property, *held* that his act was unauthorized and illegal, and that he acquired no legal estate in the building. And similarly *held* where, without authority, he permitted an enlisted man of his command to use land of the United States for the erection thereon of a dwelling and to hold and dispose of such dwelling as his own property. (Ibid., par. 21.)

Wood growing on a military reservation is the property of the United States. So, *held* that a contractor who cut such wood to fill a contract made by him with the United States to furnish wood to a military post could not legally be allowed to remove or dispose of the same as his own property, and advised that he be paid merely for the cutting. (Ibid., par. 22.)

<sup>1</sup> For statutory provisions respecting the procurement of property and supplies, see the chapters entitled CONTRACTS AND PURCHASES, and THE STAFF DEPARTMENTS. For provisions respecting the acquisition of lands by the United States, see the chapter entitled THE PUBLIC LANDS. See also paragraphs 703-707, inclusive, Army Regulations of 1895.

<sup>a</sup> But such buildings can not be sold without the authority of Congress. (Lear v. U. S., 50 Fed. Rep., 65.)

1229. Every officer commanding a troop, battery, or company, is charged with the arms, accoutrements, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.<sup>1</sup> *Tenth Article of War.*

Accountability of company commander for clothing, etc.  
10 Art. War.

#### PROPERTY ACCOUNTABILITY.

1230. That instead of forwarding to the accounting officers of the Treasury Department returns of public property entrusted to the possession of officers or agents, the Quartermaster-General, the Commissary-General of Subsistence, the Surgeon-General, the Chief of Engineers, the Chief of Ordnance, the Chief Signal Officer, the Paymaster General of the Navy, the Commissioner of Indian Affairs, or other like chief officers in any Department, by, through, or under whom stores, supplies, and other public property are received for distribution, or whose duty it is to receive or examine returns of such property, shall certify to the proper accounting officer of the Treasury Department, for debiting on the proper account, any charge against any officer or agent intrusted with public property, arising from any loss, accruing by his fault, to the Government as to the property so intrusted to him. *Sec. 1, act of March 29, 1894 (28 Stat. L., 47).*

Property returns  
Certificates of loss to be forwarded to Treasury accounting officers.  
Mar. 29 1894, v 28, p. 47.

1231. That said certificate shall set forth the condition of such officer's or agent's property returns, that it includes all charges made up to its date and not previously certified, that he has had a reasonable opportunity to be heard and has not been relieved of responsibility; the effect of such certificate, when received, shall be the same as if the facts therein set forth had been ascertained by the accounting officers of the Treasury Department in accounting. *Sec. 2, ibid.*

Contents of certificate.  
Sec. 2, *ibid.*

1232. That the manner of making property returns to or in any administrative bureau or department, or of ascertaining liability for property, under existing laws and regulations, shall not be affected by this Act, except as provided in section one; but in all cases arising as to such property so intrusted the officer or agent shall have an opportunity to relieve himself from liability. *Sec. 3, ibid.*

Methods of making returns, etc., not affected.  
Sec. 3, *ibid.*

1233. That the heads of the several Departments are hereby empowered to make and enforce regulations to

Regulations by heads of Departments.

<sup>1</sup>Under existing laws and regulations there is no system of fiscal accountability to regimental commanders for property belonging to the United States. For statutory provisions respecting such accountability see the title "Property Accountability."



Secs. 4 and 5, carry out the provisions of this Act. That all laws or  
*ibid.* parts of laws inconsistent with the provisions of this Act  
 Repeal. are hereby repealed.<sup>1</sup> *Secs. 4 and 5, ibid.*

#### DEFICIENCY IN, AND DAMAGE TO, PUBLIC PROPERTY.

Deficiencies.  
 May 18, 1826, c.  
 74, s. 3, v. 4, p. 174.  
 Sec. 1304, R. S.

1234. In case of deficiency of any article of military supplies, on final settlements of the accounts of any officer charged with the issue of the same, the value thereof shall be charged against the delinquent and deducted from his

<sup>1</sup> Under the authority conferred by this section the following regulations have been adopted and promulgated by the War Department:

#### GENERAL PROVISIONS.

Accountability and responsibility devolve upon any person to whom public property is intrusted and who is required to make returns therefor. Responsibility without accountability devolves upon one to whom such property is intrusted, but who is not required to make returns therefor. Thus, with respect to quartermaster's supplies intrusted to a company or detachment commander, responsibility but not accountability attaches. (Par. 657, A. R., 1895.)

The officer in permanent or temporary command of a post or station is responsible for the security of all public property of the command, whether in use or in store, and although for purposes of periodical accountability to the War Department it may all have been officially receipted for by subordinate officers, the commanding officer is nevertheless responsible and pecuniarily liable with them for the strict observance of the regulations in regard to its preservation, use, and issue. He will take care that all storehouses are properly guarded, that only reliable agents are employed, and only trustworthy enlisted men are detailed for duty in them or in connection with property. (Par. 658, *ibid.*)

If an officer in charge of the public property of a command (not properly pertaining to a company or detachment) is, by order, leave of absence, or any other cause, separated from it, the commanding officer or an officer designated by him will receipt and account for it. (Par. 659, *ibid.*)

If it becomes necessary to remove all officers from the charge of public property the commanding officer will take measures to secure it and report the circumstances to the proper authority. (Par. 660, *ibid.*)

A company or detachment commander is responsible for all public property pertaining to his company or detachment, and will not transfer his accountability therefor to a successor during periods of absence of less than a month, unless so ordered by competent authority; when such absence exceeds a month the question of responsibility is settled by the proper authority. (Par. 661, *ibid.*)

The officer in temporary or permanent command of a company or detachment is responsible for all public property used by or in possession of the command, whether he receipt for it or not. (Par. 662, *ibid.*)

The property responsibility of a company commander can not be transferred to enlisted men. It is his duty to attend personally to its security, and to superintend issues himself or cause them to be superintended by a commissioned officer. (Par. 603, *ibid.*)

An officer will not, when it can be avoided, be detailed for duty which will separate him from public property for which he is accountable. (Par. 654, *ibid.*)

All returns of stores or supplies will be rendered as required by regulations or orders. Those of subsistence stores and subsistence property will be forwarded within ten days after the expiration of the accounting periods, and those of other classes of stores and property within twenty days, to the chiefs of bureaus to which they pertain. Abstracts of purchases will be forwarded with the money accounts. (Par. 700, *ibid.*)

#### ADMINISTRATIVE EXAMINATION OF PROPERTY RETURNS.

As soon as possible after the receipt of a return by the proper chief of bureau, it will be examined in his office, and the officer making the return will be notified of all errors and irregularities found therein and granted three months to correct them. Suspensions or disallowances will not be made on account of slight informalities which do not affect the validity of a voucher, but the officer's attention may be called to them. Whenever the errors have been corrected or compensation has been made for deficient articles, and the action of the bureau chief is sustained or modified by the Secretary of War, the return will be regarded as settled, and the officer who rendered it will be notified accordingly. (Par. 701, *ibid.*)

If the necessary corrections in the return be not made within the prescribed time, the facts will be reported to the Secretary of War. When it has been determined that the money value of the property for which an officer has failed to account shall be refunded to the United States, the facts will be certified to the Auditor for the War Department by the chief of bureau. (Par. 702, *ibid.*)

#### ISSUES AND TRANSFERS.

A transfer of public property involves a change of possession and accountability. The transferring officer will furnish the receiving officer with invoices, in duplicate, accurately enumerating the property, and the latter will return duplicate receipts.

monthly pay, unless he shall show to the satisfaction of the Secretary of War, by one or more depositions setting forth the circumstances of the case, that said deficiency was not occasioned by any fault on his part. And in case of damage to any military supplies, the value of such damage shall be charged against such officer and deducted from his monthly pay, unless he shall, in like manner, show that such damage was not occasioned by any fault on his part.<sup>1</sup> (*See Art. of War 15.*)

The transaction will appear on the property returns rendered by each. (Par. 665, *ibid.*)

When an officer to whom stores have been forwarded believes them to have miscarried, he will promptly inform the issuing and forwarding officers. (Par. 666, *ibid.*)

If an officer to whom public property has been transferred refuses to receipt for it, the invoicing officer will report the facts to the commanding officer of the former for action. Copies of all papers relating to the transaction will be filed with his returns. (Par. 667, *ibid.*)

Upon the receipt of public property by an officer he will make careful examination to ascertain its quality and condition, but will not break original packages until issues are to be made, unless he has reason to believe the contents defective. Should he discover defect or shortage, he will apply for a board of survey to determine it and fix the responsibility. Should he consider the property unfit for use, he will submit inventories in triplicate and request the action of an inspector. The same rule will be observed in regard to packages when first opened for issue, and for property damaged or missing while in store. (Par. 668, *ibid.*)

When packages of supplies are opened for the first time, whether because of apparent defect or for issue, the officer responsible or some other commissioned officer will be present and verify the contents by actual weight, count, or measurement, as circumstances may require, and in case of deficiency or damage will make written report of the facts to the post commander. If only the officer responsible be present and make the report, he will secure the sworn statements in writing of one or more civilians or enlisted men regarding the condition of the property when examined. Should a board of survey be convened, the post commander will refer to it the report made by the examining officer, together with the sworn statements. At arsenals and depots where there are persons whose special duty it is to receive and issue public stores, the reports herein required may be made by them instead of officers of the Army. (Par. 669, *ibid.*)

The giving or taking of receipts in blank for public property is prohibited. (Par. 670, *ibid.*)

Supplies procured by one bureau will not be furnished to another, except by special authority of the Secretary of War. When furnished and restored in kind, they will be delivered at the post from which received, or at such other post as department commanders or chiefs of bureaus concerned may determine. If the transaction is between two bureaus of the War Department, payment will be made at the contract or invoice price of the stores; when between a bureau of the War Department and any other Executive Department, the amount to be paid will include the contract or invoice price and cost of transportation. (Par. 671, *ibid.*)

In no case will means of transportation or other property of any branch of the military service be taken as a part of the outfit of surveying or exploring expeditions for which Congress has made appropriations, without the express authority of the Secretary of War. (Par. 672, *ibid.*)

#### PROPERTY ACCOUNTABILITY.

All public property, whether paid for or not, must be accounted for on the proper returns. (Par. 692, *ibid.*)

An officer accountable for the public property of two or more companies will account for that pertaining to each, except quartermaster's supplies, on a separate return. (Par. 693, *ibid.*)

Accountability for public property will not be transferred to enlisted men, except to sergeants of the post noncommissioned staff at ungarrisoned posts, and sergeants of the Signal Corps. (Par. 694, *ibid.*)

Vouchers for issues or expenditures of property not authorized by regulations will be accompanied by copies of the orders directing the issues or expenditures. (Par. 695, *ibid.*)

An officer will have credit for an expenditure of property made in obedience to the order of his commanding officer. If the expenditure is disallowed, it will be charged to the officer who ordered it. (Par. 696, *ibid.*)

<sup>1</sup>Public property expended, lost or destroyed in the military service must be accounted for by affidavit, or the certificate of a commissioned officer, or other satisfactory evidence. (Par. 697, A. R., 1895.)

When an enlisted man has, by a court-martial, been convicted of losing or damaging public property, the officer responsible for the property will send with his property return a certified copy of so much of the court-martial order as refers to the

**Damage to arms.** **1235.** The cost of repairs or damages done to arms, equipments, or implements, shall be deducted from the pay of an officer or soldier in whose care or use the same were when such damages occurred, if said damages were occasioned by the abuse or negligence of said officer or soldier.

Feb. 8, 1815, c. 38, s. 7, v. 3, p. 204.  
**Sec. 1303, R. S.**

#### DISPOSITION OF DAMAGED, UNSUITABLE, OR USELESS PROPERTY.

**Sales of stores.** **1236.** The President may cause to be sold any military stores which, upon proper inspection or survey, appear to be damaged, or unsuitable for the public service. Such inspection or survey shall be made by officers designated by the Secretary of War, and the sales shall be made under regulations prescribed by him.<sup>1</sup>

Mar. 3, 1825, c. 38, ss. 1, 2, v. 4, p. 127.

**Sec. 1241, R. S.**

**Administration of oaths in accounting.**

Mar. 3, 1865, c. 78, s. 25, v. 13, p. 491; Feb. 27, 1877, c. 69, v. 19, p. 241.

**Sec. 225, R. S.**

**1237.** The Secretary of War is authorized to detail one or more of the employees of the War Department for the purpose of administering the oaths required by law in the settlement of officers' accounts for clothing, camp and garrison equipage, quartermaster's stores, and ordnance, which oaths shall be administered without expense to the parties taking them. In settling the accounts of the commanding officer of a company for clothing and other military supplies, the affidavit of any such officer may be received to show the loss of vouchers or company books, or any matter or circumstance tending to prove that any apparent deficiency was occasioned by unavoidable accident or lost in actual service, without any fault on his part, or that the whole or any part of such clothing and supplies had been properly and legally used and appropriated; and such affidavit may be considered as evidence to

case, giving number, date, and place of issue of the order, and stating on the face of said copy the rolls on which the charges are made. (Par. 698, *ibid.*)

Should an officer or agent of the Government charged with public property fail to render the prescribed returns thereof within a reasonable time, a settlement of his accounts will be made by the proper bureau of the War Department, and the money value of the property with which he is charged will be reported against him for stoppage. (Par. 699, *ibid.*)

<sup>1</sup> For other statutes authorizing the sale of obsolete and unsuitable property, see the chapters entitled THE ORDNANCE DEPARTMENT and THE PUBLIC LANDS. For provisions respecting the disposition of funds arising from the sale of public property or stores, see the chapters entitled THE PUBLIC MONIES, THE STAFF DEPARTMENTS, and the THE ORDNANCE AND SUBSISTENCE DEPARTMENTS.

Unserviceable public property can only be disposed of by sale according to the provisions of sections 1241, 3618, Revised Statutes. It can not be exchanged for other property not belonging to the United States. Thus, *held* that an old and useless printing press, the property of the United States, could not be disposed of by exchanging it for certain new property belonging to a regiment. (*Ibid.*, 633, par. 23.)

*Held* that, in the absence of specific authority from Congress, the Secretary of War would not be empowered to sell to a State, for the use of its militia, an amount of clothing in excess of the State's quota as already appropriated. And *held* that, without such authority, he would not be empowered to exchange Government property for property owned or possessed by a State; thus, that he could not legally deliver to the State of Pennsylvania certain arms, the property of the United States, in exchange for arms formerly issued to the State for the use of its militia, and in which the State had a qualified property. (*Ibid.*, par. 25.)

establish the facts set forth, with or without other evidence, as may seem to the Secretary of War just and proper under the circumstances of the case.<sup>1</sup>

<sup>1</sup>Causes of damage to, and of loss and destruction of, military property are classified as follows:

(1) Unavoidable causes, being those over which the responsible officers have no control, occurring (a) in the ordinary course of service, or (b) as incident to an active campaign.

(2) Avoidable causes, being those due to carelessness, willfulness, or neglect. (Par. 681, A. R., 1895.)

Officers responsible for property will be charged for any damage to, or loss or destruction of the same, and the money value deducted from their monthly pay, unless they show, to the satisfaction of the Secretary of War, by their own affidavits or certificates or by one or more depositions, that the damage, loss, or destruction was occasioned by unavoidable causes, and without fault or neglect on their part. (Par. 682, *ibid.*)

The proper officers to administer oaths in the administration of the affairs of the Army (except when otherwise specially provided) are judge-advocates of departments, judge-advocates of courts-martial, and trial officers of summary courts. When none of these are within reach and available, recourse must be had to a notary public or other civil officer competent to administer oaths for general purposes. (Par. 683, *ibid.*)

If an article of public property be lost or damaged by the neglect or fault of any officer or soldier, he shall pay the value thereof, or the cost of repairs, at such rates as a board of survey may determine. (Par. 684, *ibid.*)

The amount charged against an enlisted man on the muster and pay rolls on account of loss or damage of or repairs to Government property shall not exceed the value of the article or cost of repairs; and such charge will only be made on conclusive proof, and never without an inquiry, if the soldier demand it. He will be informed at the time of signing the pay rolls that his signature will be regarded as an acknowledgment of the justice of the charge. (Par. 685, *ibid.*)

When a deserter carries away public property, or when such property is lost through his desertion, its value will be determined by a board of survey and charged against him on the next muster and pay rolls. (Par. 686, *ibid.*)

If articles of public property are embezzled, or lost or damaged through neglect, by a civilian employee, the value or damage as ascertained (and by a board of survey if necessary) shall be charged to him and set against any pay or money due him. (Par. 687, *ibid.*)

For provisions respecting boards of survey, see paragraphs 708-722, Army Regulations of 1895.

#### PAYMENT OF REWARDS.

Whenever information is received that animals or other property belonging to the military service of the United States are unlawfully in the possession of any person not in the military service, the quartermaster, or other proper officer, will promptly cause proceedings to be instituted and diligently prosecuted before the civil authorities for the recovery of the property, and, if the same has been stolen, for the arrest, trial, conviction, and due punishment of the offender and his accomplices. (Par. 688, A. R., 1895.)

Upon satisfactory information that such United States property, unlawfully in the possession of any parties, is likely to be taken away, concealed, or otherwise disposed of before the necessary proceedings can be had in the civil tribunals for its recovery, the post or detachment commander will at once cause the same to be seized, and will hold it subject to any legal proceedings that may be instituted by other parties. Persons caught in the act of stealing public property will be summarily arrested by the troops and turned over to the civil authorities for trial. (Par. 689, *ibid.*)

Quartermasters, after they have failed to get possession of a lost or stolen animal by the ordinary means, may authorize the payment of a reward of not more than \$25 for its recovery. If the animal has been stolen, they may offer an additional reward of like amount for each person arrested, tried, convicted, and sentenced for the theft. (Par. 690, *ibid.*)

The expenses necessarily incurred by any action under the three preceding paragraphs, with the exception of attorney's fees, will be paid by the Quartermaster's Department, upon proper vouchers approved by the department commander. Officers will promptly report their action to department headquarters. (Par. 691, *ibid.*)

## CHAPTER XXXIV.

### THE MILITIA—THE MILITIA OF THE DISTRICT OF COLUMBIA—THE TERRITORIAL MILITIA.

#### THE MILITIA.

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| <p>Par.</p> <p>1238. The militia.</p> <p>1239. Who to be enrolled in the militia.</p> <p>1240. Enrollment, by whom.</p> <p>1241. Notice of enrollment.</p> <p>1242. Arms and accouterments.</p> <p>1243. Persons exempt.</p> <p>1244. Arrangement into divisions, brigades, etc.</p> <p>1245. Militia, how officered.</p> <p>1246. Artillery and cavalry.</p> <p>1247. Regimental colors.</p> <p>1248. Adjutant-general in each State; his duty.</p> <p>1249. Returns.</p> <p>1250. Returns to the President.</p> <p>1251. Discipline.</p> <p>1252. Officers, how to take rank.</p> <p>1253. Care of the wounded.</p> <p>1254. Brigade inspector's duty.</p> <p>1255. Privileges of certain corps.</p> <p>1256. Orders of President in case of invasion.</p> <p>1257. Militia, how apportioned.</p> <p>1258. Subject to rules of war.</p> <p>1259. Organization.</p> <p>1260. How formed.</p> <p>1261. How composed.</p> <p>1262. When called forth, term of service to be specified.</p> <p>1263. Disobedience of orders, penalty.</p> <p>1264. Pay, rations, etc.</p> <p>1265. When pay to commence.</p> <p>1266. Traveling allowance.</p> <p>1267. Forage and use of horses.</p> <p>1268. Expenses of march to rendezvous.</p> <p>1269. Addition to ration.</p> <p>1270. Provision for widows, etc., of those who die in service.</p> | <p>Par.</p> <p>1271. Volunteers, etc., to suppress Indian depredations in Florida, benefits to.</p> <p>1272. Courts-martial, how composed.</p> <p>1273. Fines assessed, how to be levied.</p> <p>1274. To be paid into the Treasury of United States.</p> <p>1275. Appropriation for arms and equipments.</p> <p>1276. Apportionment.</p> <p>1277. Secretary of War to direct purchases of arms, etc.</p> <p>1278. Unserviceable arms, etc.</p> <p>1279. Distribution of arms to States.</p> <p>1280. Distribution to States which had not received their quota from 1862 to 1869.</p> <p>1281. Arms issued to States, etc., between January 1, 1861, and April 9, 1865, and used to suppress rebellion.</p> <p>1282. Repeal of law requiring amounts for purchase of arms to be carried into the Treasury.</p> <p>1283. Appropriation available.</p> <p>1284. Permanent appropriation for arming militia not to lapse.</p> <p>1285. Issues of ordnance for practice in heavy artillery drill.</p> <p>1286. Militia of the District of Columbia.</p> <p>1287. Issues to be made from Army stores.</p> <p>1289-1291. The Territorial militia. Issues of arms to.</p> |
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1238. A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.<sup>1</sup> *Constitution of the United States, second amendment.*

The militia.  
Second amendment to Constitution.

1239. Every able-bodied male citizen of the respective States, resident therein, who is of the age of eighteen years, and under the age of forty-five years, shall be enrolled in the militia.

Who to be enrolled in the militia.

May 8, 1792, c. 33, s. 1, v. 1, p. 271; July 17, 1862, c. 201, s. 1, v. 12, p. 597; Mar. 2, 1867, c. 145, s. 6, v. 14, p. 423. Houston v. Moore, 5 Wh., 1. Sec. 1625, R. S.

1240. It shall be the duty of every captain or commanding officer of a company to enroll every such citizen residing within the bounds of his company, and all those who may, from to time, arrive at the age of eighteen years, or who, being of the age of eighteen years and under the age of forty-five years, come to reside within his bounds.

Enrollment, by whom.

May 8, 1792, c. 33, s. 1, v. 1, p. 271. Sec. 1626, R. S.

1241. Each captain or commanding officer shall, without delay, notify every such citizen of his enrollment, by a proper non-commissioned officer of his company, who may prove the notice. And any notice or warning to a citizen enrolled, to attend a company, battalion, or regimental muster, which is according to the laws of the State in which it is given for that purpose, shall be deemed a legal notice of his enrollment.

Notice of enrollment.

May 8, 1792, c. 33, s. 1, v. 1, p. 271; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207. Sec. 1627, R. S.

1242. Every citizen shall, after notice of his enrollment, be constantly provided with a good musket or firelock of a bore sufficient for balls of the eighteenth part of a pound, a sufficient bayonet and belt, two spare flints, and a knapsack, a pouch with a box therein to contain not less than twenty-four cartridges, suited to the bore of his musket or firelock, each cartridge to contain a proper quantity of powder and ball; or with a good rifle, knapsack, shot-pouch and powder-horn, twenty balls suited to the bore of his

Arms and accouterments.

May 8, 1792, c. 33, s. 1, v. 1, p. 271; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207. Sec. 1628, R. S.

<sup>1</sup> The right to bear arms is not granted by the Constitution; neither is it in any manner dependent upon that instrument for its existence. The second amendment means no more than that it shall not be infringed by Congress, and has no other effect than to restrict the powers of the National Government. (U. S. v. Cruikshank, 92 U. S., 542.)

The right voluntarily to associate together as a military company or organization, or to drill or parade with arms, without and independent of an act of Congress or law of the State authorizing the same, is not an attribute of national citizenship. Military organization and military drill and parade under arms are subjects especially under the control of the government of every country. They can not be claimed as a right independent of law. Under our political system they are subject to the regulation and control of the State and Federal Governments, acting in due regard to their respective prerogatives and powers. The Constitution and laws of the United States will be searched in vain for any support to the view that these rights are privileges and immunities of citizens of the United States, independent of some specific legislation on the subject. It can not be successfully questioned that the State governments, unless restrained by their own constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies to perform the duties or exercise the privileges of citizens of the United States; and have also the power to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power, by the States, is necessary to the public peace, safety, and good order. To deny the power would be to deny the right of the State to disperse assemblages organized for sedition and treason, and the right to suppress armed mobs bent on riot and rapine. (Presser v. Illinois, 116 U. S., 252, 267; U. S. v. Cruikshank, 92 U. S., 542; New York v. Miln, 11 Pet., 102, 139.)

rifle, and a quarter of a pound of powder; and shall appear, so armed, accoutered, and provided when called out to exercise, or into service, except that when called out on company days to exercise only, he may appear without a knapsack. And all arms, ammunition, and accouterments so provided and required shall be held exempted from all suits, distresses, executions, or sales, for debt or for the payment of taxes. Each commissioned officer shall be armed with a sword or hanger and spontoon.

Persons exempt.

May 8, 1792, c. 33, s. 2, v. 1, p. 272;  
May 7, 1800, c. 46, s. 4, v. 2, p. 62;  
Apr. 30, 1810, c. 37, s. 33, v. 2, p. 603.

Sec. 1629, R. S.

**1243.** The Vice-President of the United States; the officers judicial and executive of the Government of the United States; the members of both Houses of Congress, and their respective officers; all custom-house officers with their clerks; all postmasters and persons employed in the transportation of the mail; all ferrymen employed at any ferry on post-roads; all inspectors of exports; all artificers and workmen employed in the armories and arsenals of the United States; all pilots; all mariners actually employed in the sea-service of any citizen or merchant within the United States; and all persons who now are or may hereafter be exempted by the laws of the respective States, shall be exempted from militia duty, notwithstanding their being above the age of eighteen, and under the age of forty-five years.

Arrangement into divisions, brigades, etc.

May 8, 1792, c. 33, s. 3, v. 1, p. 272.  
Sec. 1630, R. S.

**1244.** The militia of each State shall be arranged into divisions, brigades, regiments, battalions, and companies, as the legislature of the State may direct. Each brigade may consist of four regiments; each regiment of two battalions; each battalion of five companies; each company of sixty-four privates. Each division, brigade, and regiment shall be numbered at the formation thereof; and a record of such numbers shall be made in the adjutant-general's office of the State. When in the field, or in service in the State, each division, brigade, and regiment shall respectively take rank according to its number, reckoning the first or lowest number highest in rank.

Militia, how officered.

May 8, 1792, c. 33, s. 3, v. 1, p. 272;  
Mar. 2, 1803, c. 15, s. 3, v. 2, p. 207;  
Apr. 18, 1814, c. 80, v. 3, p. 134;  
Apr. 20, 1816, c. 64, v. 3, p. 295.

Sec. 1631, R. S.

**1245.** The militia shall be officered by the respective States as follows: To the militia of each State, one quartermaster-general; to each division, one major-general, two aids-de-camp with the rank of major, one division-inspector with the rank of lieutenant-colonel, and one division-quartermaster with the rank of major; to each brigade, one brigadier-general, one brigade-inspector, to serve also as brigade-major with the rank of major, one quartermaster of brigade with the rank of captain, and one aid-de-camp with the rank of captain; to each regiment of two

battalions, one colonel, one lieutenant-colonel, one major, and one chaplain; to only one battalion, a major, who shall command the same; to each company, one captain, one lieutenant, one ensign, four sergeants, four corporals, one drummer, and one fifer or bugler. And there shall be a regimental staff, to consist of one adjutant and one quartermaster, to rank as lieutenants, one paymaster, one surgeon, one surgeon's mate, one sergeant-major, one drum-major, and one fife-major.

**1246.** There shall be formed for each battalion at least one company of grenadiers, light infantry, or riflemen, and for each division at least one company of artillery and one troop of horse. For each company of artillery there shall be one captain, two lieutenants, four sergeants, four corporals, six gunners, six bombardiers, one drummer, and one fifer. The officers shall be armed with a sword or hanger, a fusee, bayonet, and belt, with a cartridge-box to contain twelve cartridges; and each private shall furnish himself with all the equipments of a private in the infantry, until proper ordnance and field artillery is provided. For each troop of horse there shall be one captain, two lieutenants, one cornet, four sergeants, four corporals, one saddler, one farrier, and one trumpeter. The commissioned officers shall furnish themselves with good horses of at least fourteen hands and a half high, and shall be armed with a sword and pair of pistols, the holsters to be covered with bearskin caps. Each dragoon shall furnish himself with a serviceable horse, at least fourteen hands and a half high, a good saddle, bridle, mail-pillion, and valise, holsters, and a breast-plate and crupper, a pair of boots and spurs, a pair of pistols, a saber, and a cartridge-box, to contain twelve cartridges for pistols. Each company of artillery and troop of horse shall be formed of volunteers from the brigade, at the discretion of the commander-in-chief of the State, not exceeding one company of each to a regiment, nor more in number than one-eleventh part of the infantry, and shall be uniformly clothed in regimentals, to be furnished at their own expense; the color and fashion to be determined by the brigadier commanding the brigade to which they belong.

**1247.** Each battalion and regiment shall be provided with the State and regimental colors by the field-officers, and each company with a drum and fife, or bugle-horn, by the commissioned officers of the company, in such manner as the legislature of the respective States may direct.

Artillery and cavalry.  
May 8, 1792. c. 33, s. 4, v. 1, p. 272; Mar. 2, 1803, c. 15, s. 2, v. 2, p. 207.  
Sec. 1632, R. S.

Regimental colors.  
May 8, 1792. c. 33, s. 5, v. 1, p. 273.  
Sec. 1633, R. S.



Adjutant-general in each State, his duty.

May 8, 1792, c. 33, s. 6, v. 1, p. 273.  
Sec. 1634, R. S.

**1248.** There shall be appointed in each State an adjutant-general, whose duty it shall be to distribute all orders from the commander-in-chief of the State to the several corps; to attend all musters when the commander-in-chief of the State reviews the militia, or any part thereof; to obey all orders from him relative to carrying into execution and perfecting the system of military discipline established by law; to furnish blank forms of returns that may be required, and to explain the principles on which they should be made; to receive from the several officers of the different corps throughout the State returns of the militia, under their command; and to make proper abstracts from such returns, and lay the same annually before the commander-in-chief of the State.

Returns.

May 8, 1792, c. 33, s. 6, v. 1, p. 273.  
Sec. 1635, R. S.

**1249.** The several officers of the divisions, brigades, regiments, and battalions, shall report, in their returns of the corps under their command, the actual condition of their arms, accouterments, and ammunition, their delinquencies, and every other particular relating to the general advancement of good order and discipline, and shall make the same in the usual manner.

Returns to the President.

Mar. 2, 1803, c. 15, s. 1, v. 2, p. 207.  
Sec. 1636, R. S.

**1250.** It shall be the duty of the adjutant-general in each State to make return of the militia of the State, with their arms, accouterments, and ammunition, agreeably to the provisions of law, to the President of the United States, annually, on or before the first Monday in January; and it shall be the duty of the Secretary of War, from time to time, to give such directions to the adjutant-generals of the militia as may, in his opinion, be necessary to produce a uniformity in such returns.

Discipline.

May 12, 1820, c. 97, s. 1, v. 3, p. 577.  
Sec. 1637, R. S.

**1251.** The system of discipline and field exercise which is ordered to be observed in the different corps of infantry, artillery, and riflemen of the Regular Army, shall also be observed in such corps, respectively, of the militia.<sup>1</sup>

Officers, how to take rank.

May 8, 1792, c. 33, s. 8, v. 1, p. 273.  
Sec. 1638, R. S.

**1252.** All commissioned officers shall take rank according to the date of their commissions; and when two of the same grade bear an equal date, their rank shall be determined by lot to be drawn by them before the commanding officer of the brigade, regiment, battalion, company, or detachment.

Care of the wounded.

May 8, 1792, c. 33, s. 9, v. 1, p. 273.  
Sec. 1639, R. S.

**1253.** If any person, whether officer or soldier, belonging to the militia of any State, and called out into the service of the United States, be wounded or disabled while in

<sup>1</sup>There is no existing statute of the United States authorizing the President to call out the militia for drill merely. The Constitution, in empowering Congress "to provide for organizing, arming and disciplining the militia," leaves their training to the States, and it is at least doubtful whether an act of Congress regulating the drill of the militia would be constitutional. (Dig. J. A. G., 520, par. 9.)

actual service, he shall be taken care of and provided for at the public expense.

**1254.** It shall be the duty of the brigade-inspector to attend the regimental and battalion meetings of the militia composing the several brigades, during the time when they are under arms, to inspect their arms, ammunition, and accouterments; to superintend their exercise and maneuvers, and introduce throughout the brigade the system of military discipline prescribed by law, and such orders as they receive from the commander-in-chief of the State; and to make returns to the adjutant-general of the State, at least once in every year, of the militia of the brigade to which he belongs, reporting therein the actual condition of the arms, accouterments, and ammunition of the several corps, and every other particular which, in his judgment, may relate to their government and the general advancement of good order and military discipline.

Brigade in-  
spectors duty.  
May 8, 1792, c.  
33, s. 10, v. 1, p.  
273.  
Sec. 1640, R. S.

**1255.** All corps of artillery, cavalry, and infantry, now existing in any State, which, by any law, custom, or usage thereof, have not been incorporated with the militia, or are not governed by the general regulations thereof, shall be allowed to retain their accustomed privileges, subject, nevertheless, to all other duties required by law in like manner as the other militia.

Privileges of  
certain corps.  
May 8, 1792, c.  
33, s. 11, v. 1, p.  
274.  
Sec. 1641, R. S.

**1256.** Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.<sup>1</sup>

Orders of Pres-  
ident in case of  
invasion.  
Feb. 28, 1795, c.  
36, s. 1, v. 1, p. 424.  
Martin v. Mott, 12  
Wh., 19; McCall's  
Case, 5 Phila.,  
259.  
Sec. 1642, R. S.

<sup>1</sup> The President has no original authority over the militia by right of his office. He can only call them out when Congress provides for his doing so as the agent of the United States for such purpose. When the call is complied with, the militia becomes national militia, and he becomes their commander-in-chief. The law governing his exercise of power in calling out is found in sections 1642, 5297, 5298, and 5299, Revised Statutes. (Dig. Opin. J. A. Gen., 519, par. 2.)

The manner of calling out of the militia by the President under the act of 1795 (sec. 1642, R. S.), is indicated by the Supreme Court in the leading case of *Honston v. Moore*, (a) where it is observed that "The President's orders may be given to the chief executive magistrate of the State, or to any militia officer he may think proper." The call would ordinarily be addressed to the governor, who, in most of the States, is made commander-in-chief of the active militia of the State. A further form, indeed, of calling out the militia, viz, by a conscription, was authorized during the late war, by the act of July 17, 1862. (Ibid., par. 1.)

The calling forth of the militia into the United States service is an administrative function, a ministerial act, in which the Secretary of War may issue the necessary orders as the origin of the Executive, and his act is the act of the President. Ibid., par. 3.)

The President, in calling out a force of militia, authorized the governor of a State

Militia, how apportioned.

July 17, 1862, c. 201, s. 1, v. 12, p. 597.

Sec. 1643, R. S.

Subject to rules of war.

Feb. 28, 1795, c. 36, s. 4, v. 1, p. 424; July 29, 1861,

c. 25, s. 3, v. 12, p.

282; Martin v.

Mott, 12 Wh. 19

Sec. 1644, R. S.

Organization.

July 17, 1862,

c. 201, s. 2, v. 12, p. 598.

How formed.

Sec. 1645, R. S.

July 22, 1861,

c. 9, s. 2, v. 12, p.

269; July 2, 1862,

c. 127, s. 3, v. 12, p.

502; July 17, 1862,

c. 200, s. 5, v. 12, p.

594.

Sec. 1646, R. S.

**1257.** When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

**1258.** The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

**1259.** The militia, when called into actual service, shall be organized as prescribed in the two sections following.

**1260.** They shall be formed, by the President, into regiments of infantry, with the exception of such numbers for cavalry and artillery as he may direct, not to exceed the proportion of one company of each of those arms to every regiment of infantry, and to be organized as in the regular

to designate the particular militia of that State to be included in the call, and the governor thereupon designated a certain regiment, and formally accepted its service. Held that in so doing he acted as the agent of the President and that his acceptance was in law an acceptance by the President, and was equivalent to a muster-in of the regiment (*Ibid.*, par. 5.)

In 1836 an Indian agent in Indiana applied for assistance, in an emergency, to a militia colonel, who furnished three companies of his regiment, which were employed and rendered faithful service for seven days in assisting to execute the laws of the United States. Upon a claim now (1893) made for compensation for such service, held that the same could not legally be allowed by the Secretary of War, who could have no authority to recognize, as in the United States service, militia who had not been called out by the President or by his direction; and that such claim could be entertained by Congress alone. (*Ibid.*, par. 6.)

In the exercise of its constitutional power "to provide for calling forth the militia," and "to provide for organizing" the same, etc., Congress has made no distinction between any different portions of this force, or recognized any such portion as "national guard." The law relating to the subject, Revised Statutes, title 16 sections 1625, 1642, etc., contemplates but a single integral body as constituting the militia and as liable to be called out. Under the existing law, the "national guard" of a State can not legally be called out as such. Upon a call, the governor may indeed order them out, as being organized and available, so far as they will go to make up the number of the militia required. (*Ibid.*, p. 520, par. 7.)

The United States statutes take no notice of "national guard" as such. If called out, it is not as "national guard," but as militia; and when so called forth or included in a call, it must be governed by the existing laws providing for the organization, discipline, etc., of the militia. (*Ibid.*, par. 8.)

The "national guard," so called, being merely militia, can not (where not called forth) be "supported" or "maintained" by Congress, which is authorized by the Constitution to "support" and "maintain" the Army and Navy only. So officers of the national guard can not be commissioned by the President without a violation of the Constitution, which "reserves the appointment of militia officers to the States respectively." (*Ibid.*, par. 10.)

The act of February 28, 1895 (1 Stat. L., 424), authorizing the President under certain circumstances to call out the militia, is constitutional, and the President is the final judge of the emergency justifying such call. This construction necessarily results from the nature of the power itself and from the manifest object contemplated by the act of Congress. The power itself is to be exercised upon sudden emergencies, upon great occasions of state, and under circumstances which may be vital to the existence of the Union. A prompt and unhesitating obedience to orders is indispensable to the complete attainment of the object. The service is a military service, and the command of a military nature; and in such case every delay and every obstacle to an efficient and immediate compliance necessarily tend to jeopard the public interests. (*Martin v. Mott*, 12 Wheat. 19, 30.)

Where a power is confided to the President by law the presumption is that, in the exercise of that power, he has pursued the law. The existence of an exigency justifying the calling out of the militia is not traversable, and need not be averred. It is not necessary to set forth the orders of the President; it is sufficient to state that the call of the governor for the militia was in obedience to them. For disobedience to a call made by a governor for the militia, in pursuance of the orders of the President, a citizen is liable to be tried by a court-martial organized under the laws of the United States. (*Ibid.*, 33.)

In the case of *Houston v. Moore* (5 Wheat., 1), it was decided that, although a militiaman, who refused to obey the orders of the President calling him into the public service, was not, in the sense of the act of 1795, "employed in the service of the United States" so as to be subject to the Rules and Articles of War, yet that he was liable to be tried for the offense under the fifth section of the same act by a court-martial called under the authority of the United States.

service. Each regiment of infantry shall have one colonel, one lieutenant-colonel, one major, one adjutant, (a lieutenant,) one quartermaster, (a lieutenant,) one surgeon and two assistant surgeons, one sergeant-major, one regimental quartermaster-sergeant, one regimental commissary-sergeant, one hospital steward and two principal musicians, and shall be composed of ten companies, each company to consist of one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, eight corporals, two musicians, one wagoner, and from sixty-four to eighty-two privates.

1261. They shall be further organized into divisions of three or more brigades each; and each division shall have a major-general, three aids-de-camp, and one assistant adjutant-general with the rank of major. Each brigade shall be composed of four or more regiments, and shall have one brigadier-general, two aids-de-camp, one assistant adjutant-general with the rank of captain, one surgeon, one assistant-quartermaster, one commissary of subsistence, and sixteen musicians as a band.

1262. Whenever the President calls forth the militia of the States, to be employed in the service of the United States, he may specify in his call the period for which such service will be required, not exceeding nine months, and the militia so called shall be mustered in and continued to serve during the term so specified, unless sooner discharged by command of the President.

1263. Every officer, non-commissioned officer, or private of the militia, who fails to obey the orders of the President when he calls out the militia into the actual service of the United States, shall forfeit of his pay a sum not exceeding one year's pay, and not less than one month's pay, to be determined and adjudged by a court-martial; and such officer shall be liable to be cashiered by a sentence of court-martial, and be incapacitated from holding a commission in the militia for a term not exceeding twelve months; and such non-commissioned officer and private shall be liable to imprisonment, by a like sentence, on failure to pay the fines adjudged against him, for one calendar month for every twenty-five dollars of such fine.

1264. The militia when called into the actual service of the United States, shall, during their time of service, be entitled to the same pay, rations, clothing, and camp equipage as may be provided by law for the Army of the United States.

How composed.  
July 22, 1861  
c. 9, s. 3, v. 12, p. 269.  
July 17, 1862, c. 200 s. 6, v. 12, p. 594.  
Sec. 1647, R. S.

When called forth, term of service to be specified.  
July 17, 1862, c. 201, s. 1, v. 12, p. 597.  
Sec. 1648, R. S.

Disobedience of orders, penalty.  
Feb. 23, 1795, c. 36, s. 5, v. 1, p. 424; July 29, 1861, c. 25, s. 4, v. 12, p. 282. *Wise v. Withers*, 2 Cr., 331; *Houston v. Moore*, 5 Wh. 1; *Martin v. Mott*, 12 Wh., 19; *Meade's Case*, 1 Brock., 324.  
Sec. 1649, R. S.

Pay, rations, etc.  
Mar. 19, 1836, c. 44, s. 1, v. 5, p. 7; July 29, 1861, c. 25, s. 3, v. 12, p. 282.  
Sec. 1650, R. S.

When pay to commence. **1265.** Whenever the militia is called into the actual service of the United States, their pay shall be deemed to commence from the day of their appearing at the place of battalion, regimental, or brigade rendezvous.<sup>1</sup>

Traveling allowance. **1266.** The officers, non-commissioned officers, musicians, artificers, and privates shall be entitled to one day's pay, subsistence, and allowances for every twenty miles' travel from their places of residence to the place of general rendezvous, and from the place of discharge back to their residence.

Forage and use of horses. **1267.** The officers of all mounted companies in the militia called into service of the United States shall each be entitled to receive forage, or money in lieu thereof, for two horses when they actually keep private servants, and for one horse when without private servants, and forty cents per day shall be allowed for the use and risk of each horse, except horses killed in battle or dying of wounds received in battle. Each non-commissioned officer, musician, artificer, and private of such mounted companies shall be entitled to receive forage in kind for one horse, with forty cents per day for the use and risk thereof, except horses killed in battle, or dying of wounds received in battle, and twenty-five cents per day in lieu of forage and subsistence, when the same is furnished by himself, or twelve and a half cents per day for either, as the case may be.

Expenses of march to rendezvous. **1268.** The expenses incurred by marching the militia of any State or Territory to their places of rendezvous, in pursuance of a requisition of the President, or of a call made by the authority of any State or Territory and approved by him, shall be adjusted and paid in like manner as the expenses incurred after their arrival at such places of rendezvous, on the requisition of the President; but this provision does not authorize any species of expenditure, previous to arriving at the place of rendezvous, which is not provided by existing laws to be paid for after their arrival at such place of rendezvous.

Addition to ration. **1269.** When the militia in the military service of the United States are employed on the western frontiers, there shall be allowed two ounces of flour or bread, and two ounces of beef or pork, in addition to each of their rations, and half a pint of salt, in addition to every hundred of their rations.

<sup>1</sup>Unlike a volunteer regiment, where the muster-in fixes the commencement of the time of actual service, it is not essential for a militia organization that there should be a formal muster-in, to bring it into the actual service of the United States. The provision of the act of 1862 relating to the muster-in of militia is directory only. (Dig. J. A. Gen., 519, par. 4.)

**1270.** When any officer, non-commissioned officer, artificer, or private of the militia or volunteer corps dies in the service of the United States, or in returning to his place of residence after being mustered out of service, or at any time in consequence of wounds received in service, and leaves a widow, or if no widow, a child or children under sixteen years of age, such widow, or if no widow, such child or children, shall be entitled to receive half the monthly pay to which the deceased was entitled, at the time of his death, during the term of five years; and in case of the death or intermarriage of such widow before the expiration of five years, the half-pay for the remainder of the time shall go to the child or children of the decedent. And the Secretary of the Interior shall adopt such forms of evidence, in applications under this section as the President may prescribe.

Provision for widows etc., of those who die in the service.

Mar. 19, 1836, c. 44, s. 5, v. 5, p. 7.  
Sec. 1656, R. S.

**1271.** The volunteers or militia, who have been received into the service of the United States, to suppress Indian depredations in Florida, shall be entitled to all the benefits which are conferred on persons wounded or otherwise disabled in the service of the United States.

Volunteers, etc., to suppress Indian depredations in Florida; benefits to.

Mar. 19, 1836, c. 44, s. 4, v. 5, p. 7.  
Sec. 1657, R. S.

**1272.** Courts-martial for the trial of militia shall be composed of militia officers only.<sup>1</sup>

Courts-martial, how composed.

Feb. 28, 1795, c. 36, s. 6, v. 1, p. 424; July 29, 1861, c. 25, s. 5, v. 12, p. 282.

Sec. 1658, R. S.

**1273.** All fines assessed under the provisions of law concerning the militia or volunteer corps, when called into the actual service of the United States, shall be certified by the presiding officer of the court-martial, before whom they are assessed, to the marshal of the district in which the delinquent resides, or to one of his deputies, and to the Comptroller of the Treasury, who shall record the certificate in a book to be kept for that purpose. The marshal or his deputy shall forthwith proceed to levy the fines with costs, by distress and sale of the goods and chattels of the delinquent, which costs and the manner of proceeding, with respect to the sale of the goods distrained, shall be agreeable to the laws of the State in which the same may be in other cases of distress. And where any non-commissioned officer or private is adjudged to suffer imprisonment, there being no goods or chattels to be found whereof to levy the fines, the marshal of the district or his deputy shall commit such delinquent to jail, during the term for which he is so adjudged to imprisonment, or until the fine is paid, in

Fines assessed, how to be levied.

Feb. 28, 1795, c. 36, s. 7, v. 1, p. 424; Feb. 2, 1813, c. 18, s. 1, v. 2, p. 797; July 29, 1861, c. 25, s. 6, v. 12, p. 282.  
Sec. 1659, R. S.

<sup>1</sup> Section 1658, Revised Statutes, prescribes that "courts-martial for the trial of militia shall be composed of militia officers only." *Held* that the enactment applied also in principle to courts of inquiry convened in the militia, and that officers of the Army could not, for purposes of instruction or assistance, legally be detailed to be associated with militia officers as members of such courts. (Dig. Opin. J. A. Gen., 521, par. 11.)

the same manner as other persons condemned to fine and imprisonment at the suit of the United States may be committed.

To be paid into the Treasury of the United States.

Feb. 28, 1795, c. 36, s. 8, v. 1, 425; Feb. 2, 1813, c. 18, s. 2, v. 2, p. 797; July 29, 1861, c. 25, s. 6, v. 12, p. 282.

Sec. 1660, R. S.

Annual appropriation for arms and equipments.

Apr. 23, 1808, c. 55, s. 1, v. 2, p. 490; Apr. 29, 1816, c. 135, s. 1, v. 3, p. 320; Mar. 3, 1875, c. 133, s. 3, v. 18, p. 455; Feb. 12, 1887, v. 24, p. 401.

Sec. 1661, R. S. Apportionment.

Sec. 2, *ibid.*

States having uniformed militia only, entitled.

Secretary of War to direct purchase of arms, etc.

Sec. 3, *ibid.*

**1274.** The marshal shall pay all fines collected by him or his deputy, under the authority of the preceding section, into the Treasury of the United States, within two months after he has received the same, deducting five per centum for his compensation, and in case of failure, it shall be the duty of the Comptroller of the Treasury to give notice to the district attorney of the United States, who shall proceed against the marshal in the district court, by attachment, for the recovery of the same.

**1275.** That the sum of four hundred thousand dollars is hereby annually appropriated, to be paid out of any money in the Treasury not otherwise appropriated, for the purpose of providing arms, ordnance stores, quartermaster's stores, and camp equipage for issue to the militia.<sup>1</sup> *Act of February, 12, 1887 (24 Stat. L., 401).*

**1276.** That said appropriation shall be apportioned among the several States and Territories under the direction of the Secretary of War, according to the number of Senators and Representatives to which each State respectively is entitled in the Congress of the United States, and to the Territories and District of Columbia such proportion and under such regulations as the President may prescribe: *Provided, however,* That no State shall be entitled to the benefits of the appropriation apportioned to it unless the number of its regularly enlisted, organized, and uniformed active militia shall be at least one hundred men for each Senator and Representative to which such State is entitled in the Congress of the United States. And the amount of said appropriation which is thus determined not to be available shall be covered back into the Treasury.<sup>2</sup> *Sec. 2, ibid.*

**1277.** That the purchase or manufacture of arms, ordnance stores, quartermaster's stores, and camp equipage for the militia under the provisions of this act shall be made under the direction of the Secretary of War, as such arms, ordnance and quartermaster's stores and camp equipage are now manufactured or otherwise provided for the use of the Regular Army, and they shall be receipted for and shall remain the property of the United States, and be annually

<sup>1</sup> The cost of transporting arms and equipments to the points designated by proper authority for issue to the militia of the several States and Territories and the District of Columbia is an expenditure incident to the object of the appropriation "Arming and equipping the militia," made by the act of February 12, 1887 (24 Stat. L., 401, 402), and is therefore properly chargeable to it, unless provision is specifically made therefor. (3 Dig. Comp. Dec., 356.)

<sup>2</sup> For provisions of statutes respecting certain special issues of arms and ammunition to the militia of the States and Territories, see paragraphs 1290 and 1291 *post*.

accounted for by the governors of the States and Territories, for which purpose the Secretary of War shall prescribe and supply the necessary blanks and make such regulations as he may deem necessary to protect the interest of the United States.<sup>1</sup> *Sec. 3, ibid.*

1278. That all arms, equipments, ordnance stores, or tents which may become unserviceable or unsuitable shall be examined by a board of officers of the militia, and its report shall be forwarded by the governor of the State or Territory direct to the Secretary of War, who shall direct what disposition, by sale or otherwise, shall be made of them; and, if sold, the proceeds of such sale shall be covered into the Treasury of the United States. *Sec. 4, ibid.*

Unserviceable  
arms, etc.  
*Sec. 4, ibid.*

1279. All the arms procured in virtue of any appropriation authorized by law for the purpose of providing arms and equipments for the whole body of the militia of the United States shall be annually distributed to the several States of the Union according to the number of their Representatives and Senators in Congress, respectively; and all arms for the Territories and for the District of Columbia shall be annually distributed in such quantities, and under such regulations, as the President may prescribe. All such arms are to be transmitted to the several States and Territories by the United States.

Distribution of  
arms to States,  
etc.

Apr. 23, 1808, c.  
55, s. 3, v. 2, p. 490;  
Mar. 3, 1855, c.  
169, s. 7, v. 10, p.  
639.  
*Sec. 1667, R. S.*

1280. The Secretary of War is authorized and directed to distribute to such States as did not receive the same, their proper quota of arms and military equipments for each year, from eighteen hundred and sixty-two to eighteen hundred and sixty-nine, under the provisions of section sixteen hundred and sixty-two: *Provided*, That in the organization and equipment of military companies and organizations with such arms, no discrimination shall be made between companies and organizations on account of race, color, or former condition of servitude.

Distribution to  
States which had  
not received  
their quota from  
1862 to 1869.

Mar. 3, 1873, c.  
282, v. 17, p. 608.  
*Sec. 1670, R. S.*

1281. That all issues of arms and other ordnance stores which were made by the War Department to the States and Territories between the first day of January, eighteen hundred and sixty-one, and the ninth day of April, eighteen hundred and sixty-five, under the act of April twenty-third, eighteen hundred and eight, and charged to the States and Territories, having been made for the maintenance and preservation of the Union, and properly chargeable to the United States, the Secretary of War is hereby authorized, upon a proper showing by such States of the faithful disposition of said arms and ordnance stores, in the service of the United States in the suppression of the war

Arms, etc., is-  
sued to States  
and Territories  
between Jan. 1,  
1861, and Apr. 9,  
1865, and used to  
suppress rebel-  
lion.

1808, c. 55, v. 2,  
p. 490.  
*Sec. 3, Mar. 3,  
1875, v. 18, p. 455.*

*Sec. 1661, R. S.*

<sup>1</sup> For provisions of statutes respecting certain special issues of arms and ammunition to the militia of the States and Territories, see paragraphs 1290 and 1291, *post*.



**Credit to** of the rebellion, to credit the several States and Territories with the sum charged to them respectively for arms and other ordnance-stores which were issued to them between the aforementioned dates, and charged against their quotas under the law for arming and equipping the militia: *Provided*, That it shall be the duty of the Secretary of War, before making a credit to any of said States and Territories, to investigate and ascertain, so nearly as he can, the disposition made by each of said States and Territories of said arms and ordnance-stores; and, if he shall find that any of said arms or ordnance-stores have been sold or otherwise misapplied, to refuse a credit to such State or Territory for so much of said arms and ordnance-stores as have been sold or misapplied; and the amount thereof shall remain a charge against said State or Territory, the same as if this act had not been passed: *And provided further*, That so much of the appropriations between the first of January, eighteen hundred and sixty-one, and the ninth of April, eighteen hundred and sixty-five, under the act of April twenty-third, eighteen hundred and eight herein referred to, as would have been used for the purchase of arms to be distributed to the several States that were in rebellion, shall be covered into the Treasury of the United States.<sup>1</sup>

**Quota of rebellious States of arms, appropriation to be covered in.**

*Sec. 3, act of March 3, 1875 (18 Stat. L., 455).*

**Repeal of law requiring amounts for purchase of arms for States while in rebellion to be covered into the Treasury.**

**1282.** That so much of section three of an act making appropriations for the support of the Army for the fiscal year ending June thirtieth, eighteen hundred and seventy-six, and for other purposes, approved March third, eighteen hundred and seventy-five, as provides that so much of the appropriations between the first of January, eighteen hundred and sixty-one, and the ninth of April, eighteen hundred and sixty-five, under the act of April twenty-third, eighteen hundred and eight, therein referred to, as would have been used for the purchase of arms to be distributed to the several States that were in rebellion, shall be covered into the Treasury of the United States, be, and the same is hereby, repealed. *Act of March 3, 1887 (24 Stat. L., 551).*

**Mar. 3, 1887, v. 24, p. 551.**

**V. 18, p. 455.**

**V. 2, p. 490.**

**Appropriation available.**

**Sept. 22, 1888, v. 25, p. 487.**

**1283.** That the cost to the Ordnance Department of all ordnance and ordnance stores issued to the States, Territories, and District of Columbia, under the act of February twelfth, eighteen hundred and eighty-seven, shall be

<sup>1</sup> The act of March 3, 1875 (18 Stat. L., 455), authorized the Secretary of War to credit the several States and Territories with arms drawn by them between January 1, 1861, and April 23, 1868, and used for the suppression of the rebellion. The act of March 3, 1887 (24 Stat. L., 551), repealed so much of the act of March 3, 1875, as required the unexpended balances of the appropriations for the purchase of arms for distribution to the States in rebellion to be covered into the Treasury.

credited to the appropriation for "manufacture of arms at national armories," which appropriation for eighteen hundred and eighty-nine and thereafter shall be available until exhausted. *Act of September 22, 1888 (25 Stat. L., 487).*

**1284.** The permanent annual appropriation made by the act of April twenty-third, eighteen hundred and eight, designated as section sixteen hundred and sixty-one of the Revised Statutes, and which was increased to four hundred thousand dollars by the act of February twelfth, eighteen hundred and eighty-seven, being for the procurement of ordnance and ordnance stores and quartermaster's stores and camp equipage for the use of the militia of the country, shall not lapse with the end of any fiscal year nor be turned into the surplus fund, but shall remain a permanent appropriation and be available for the several States and Territories and District of Columbia, until expended as provided in said acts, or otherwise disposed of by Congress.<sup>1</sup> *Act of August 18, 1894 (28 Stat. L., 406).*

Permanent appropriation for arming militia not to lapse.  
V. 24, p. 401.  
Aug. 18, 1894, v. 28, p. 406.

**1285.** That the Secretary of War is hereby authorized, at his discretion, to issue, on the requisition of the governor of a State bordering on the sea or gulf coast, and having a permanent camping ground for the encampment of the militia not less than six days annually, two heavy guns and four mortars, with carriages and platforms, if such can be spared, for the proper instruction and practice of the militia in heavy artillery drill, and for this purpose a suitable battery for these cannon will be constructed; and for said construction and the transportation of said cannon, and so forth, the sum of five thousand dollars is hereby appropriated for supplying each State that may so apply. *Sec. 2, act of May 19, 1882 (22 Stat. L., 93).*

Issues of ordnance for practice in heavy artillery drill.  
Sec. 2, May 19, 1882, v. 22, p. 93.

#### MILITIA OF THE DISTRICT OF COLUMBIA.

**1286.** That every able-bodied male citizen resident within the District of Columbia, of the age of eighteen years and under the age of forty-five years, excepting persons exempted by section two, and idiots, lunatics, common drunkards, vagabonds, paupers, and persons convicted of

Militia of the District of Columbia.  
Mar. 1, 1889, v. 25, p. 772.

<sup>1</sup>By several statutes special authority is conferred upon the Secretary of War to adjust the accounts of particular States and Territories for issues of arms and munitions of war. For such provisions as to the State of Kansas, see the acts of August 15, 1876 (19 Stat. L., 206), July 28, 1886 (24 Stat. L., 159); as to the Territory of Montana, see the act of February 15, 1887 (24 Stat. L., 404); as to the Territory of Dakota, see the act of February 28, 1887 (24 Stat. L., 432); as to the State of Washington, see the act of June 10, 1890 (26 Stat. L., 130); as to the State of Colorado, see the act of August 4, 1886 (24 Stat. L., 219). The act of January 16, 1889 (25 Stat. L., 646), authorized the Secretary of War to issue additional arms and military stores to the Territory of Montana; the same statute authorized a similar issue to the State of Oregon. The joint resolution of June 7, 1878 (20 Stat. L., 252), authorized the issue of 1,000 stand of arms, with 50 cartridges to each, to each of the Territories, in addition to those already authorized by law. See also the title "Arms, Armories, and Arsenals" in the chapter entitled THE ORDNANCE DEPARTMENT.

Persons to be enrolled. any infamous crime, shall be enrolled in the militia. Persons so convicted after enrollment shall forthwith be disenrolled; and in all cases of doubt respecting the age of a person enrolled, the burden of proof shall be upon him.

Exemptions. SEC. 2. That in addition to the persons exempted from enrollment in the militia by the general laws of the United States, the following persons shall also be exempted from enrollment in the militia of the District of Columbia, namely: Officers of the government of the District of Columbia; judges and officers of the courts of the District of Columbia; officers who have held commissions in the Regular or Volunteer Army or Navy of the United States; officers who have served for a period of five years in the militia of the District of Columbia or of any State of the United States; ministers of the gospel; practicing physicians; conductors and engine-drivers of railroad trains; members of the paid police and fire department.

Assessors to enroll. SEC. 3. That the Commissioners of the District of Columbia shall provide for the enrollment of the militia, and for this purpose may require the assessors of taxes, at the same time they are engaged in taking the assessment of valuation of real and personal property, to make a list of persons liable to enrollment; and such record shall be deemed a sufficient notification to all persons whose names are thus recorded that they have been enrolled in the militia. Immediately after the completion of each enrollment they shall furnish the commanding-general of the militia with a copy of the same.

Duty. SEC. 4. That the enrolled militia shall not be subject to any duty except when called into the service of the United States, or to aid the civil authorities in the execution of the laws or suppression of riots.

Ordering into service. SEC. 5. That whenever it shall be necessary to call out any portion of the enrolled militia the commander-in-chief shall order out, by draft or otherwise, or accept as volunteers as many as required. Every member of the enrolled militia who volunteers, or who is ordered out or drafted under the provisions of this act, who does not appear at the time and place designated, may be arrested by order of the commanding general and be tried and punished by a court-martial. The portion of the enrolled militia ordered out or accepted shall be mustered into service for such period as may be required, and the commanding general may assign them to existing organizations of the active militia, or may organize them as the exigencies of the occasion may require.

SEC. 6. That the President of the United States shall be the commander-in-chief of the militia of the District of Columbia. Commander-in-chief.

SEC. 7. That there shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia, with the rank of brigadier-general, who shall hold office until his successor is appointed and qualified, but may be removed at any time by the President. Commanding general.

SEC. 8. That the staff of the militia of the District of Columbia shall be appointed and commissioned by the President, and hold office until their successors are appointed and qualified, but may be removed at any time by the President. It shall consist of one adjutant-general, with the rank of lieutenant-colonel; one inspector-general, one quartermaster-general, one commissary-general, one chief of ordnance, one chief engineer, one surgeon-general, one judge-advocate-general, and one inspector-general of rifle practice, each with the rank of major; and four aids-de-camp, each with the rank of captain. The commanding general may appoint a non-commissioned staff of the militia, to consist of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, one ordnance sergeant, two staff sergeants, one hospital-steward, one color-sergeant, and one sergeant-bugler. Staff officers. Non-commissioned staff.

SEC. 9. That the President may assign an officer of the Army to act as adjutant-general of the militia of the District of Columbia, who, while so assigned, shall be commissioned as such and be subject to the orders of the commanding general and the provisions of this act: *Provided, however,* That the officer so assigned shall receive no other pay or emolument than that to which his rank in the Army entitles him when on detached service.<sup>1</sup> Detail for adjutant-general. Pay.

#### THE ACTIVE MILITIA: ITS ORGANIZATION.

Active militia.

SEC. 10. That the active militia shall be composed of volunteers, and shall be designated the National Guard of the District of Columbia; and in case the militia of the District of Columbia are called into the service of the United States, or required for the suppression of riots, or to aid civil officers in the execution of the laws, shall be the first to be ordered into service. Organization of national guard.

SEC. 11. That in time of peace the National Guard shall Strength on peace basis.

<sup>1</sup>Held that it would not be within the prohibitions of section 1222, Revised Statutes, but legal to detail an officer of the Army to act as adjutant-general of the militia of the District of Columbia, there being no such office established by law; that such officer, in so acting, would be performing military service and would not be holding a "civil office." (Dig. Opin. J. A. G., 521, par. 16.)

consist of not more than twenty-eight companies of infantry, which shall be arranged by the commanding general into such regiments, battalions, and unattached companies as he may deem expedient; one battery of light artillery; one signal corps; one ambulance corps; one engineer corps; one band of music, and one corps of field musicians.

Regiments of  
infantry.

SEC. 12. That regiments of infantry shall consist of three battalions; and to each regiment there shall be one colonel and one lieutenant-colonel, and a staff to consist of one surgeon, one adjutant, one quartermaster, one inspector of rifle practice, and one chaplain, each with the rank of captain; and a non-commissioned staff, consisting of one sergeant-major, one quartermaster-sergeant, one commissary-sergeant, and one hospital-steward.

Infantry bat-  
talions.

SEC. 13. That battalions of infantry shall consist of four companies; and to each battalion there shall be one major; and a staff consisting of one surgeon, one adjutant, one quartermaster, and one inspector of rifle practice, each with the rank of first lieutenant; and a non-commissioned staff, consisting of one sergeant-major, one quartermaster-sergeant, and one hospital-steward.

Infantry com-  
panies.

SEC. 14. That to each company of infantry there shall be one captain, one first lieutenant, one second lieutenant, one first sergeant, four sergeants, one corporal to each ten privates, and not more than eighty-seven privates; and the minimum number of enlisted men shall be forty.

Artillery bat-  
tery.

SEC. 15. That the battery of light artillery shall have not less than four nor more than six guns. To four guns there shall be one captain, two first lieutenants, one second lieutenant, one first sergeant, one quartermaster-sergeant, five sergeants, eight corporals, two buglers, and not more than eighty-two privates; and the minimum number of enlisted men shall be fifty-seven. To more than four guns there shall be, for each additional gun, one sergeant, two corporals, and not more than twenty nor less than ten privates; for two additional guns there shall be one additional second lieutenant.

Signal, ambu-  
lance, and engi-  
neer corps.

SEC. 16. That to each signal corps, ambulance corps, and engineer corps, there shall be one first lieutenant, two sergeants, two corporals, and not more than thirty-two nor less than fourteen privates.

Band.

SEC. 17. That the band of music shall consist of one chief musician, two sergeants, two corporals, and thirty-two privates; and the corps of field music of one principal musician, two sergeants, two corporals, and thirty-two privates. The chief musician, principal musician, and

other non-commissioned officers of the band and field music shall be appointed by the commanding general.

SEC. 18. That when any company of the National Guard shall, for a period of not less than ninety days, contain less than the minimum number of enlisted men prescribed by this act, or upon a duly ordered inspection, shall be found to have fallen below a proper standard of efficiency, the commanding general may either disband such company or consolidate it with any other company of the National Guard, and grant an honorable discharge to the supernumerary officers and non-commissioned officers produced by such consolidation. Officers and enlisted men discharged by reason of such disbanding or consolidation and at any time thereafter re-entering the service shall have allowed to them, as part of their term of service, the time already served.

Disbanding of companies below minimum strength.

ELECTION, APPOINTMENT, AND DISCHARGE OF COMMISSIONED OFFICERS. Commissioned officers.

SEC. 19. That all officers shall be commissioned by the President of the United States. In time of peace, or when not in the service of the United States, they shall previously be elected or nominated as herein provided. No person commissioned as an officer shall assume such rank, or enter upon the duties of the office to which he may be commissioned, until he has accepted such commission and taken such oath or affirmation as may be prescribed.

Commission.

Oath.

SEC. 20. That the staff officers of a regiment or battalion shall be nominated by the permanent commander thereof.

Staff officers.

SEC. 21. That field officers of regiments or battalions shall be nominated by the commanding general. Captains and lieutenants of companies shall be elected by the written votes of the enlisted men of the respective companies.<sup>1</sup>

Field officers.

Company officers.

SEC. 22. That elections of officers shall be ordered and held under such regulations as may be prescribed by the commanding general.

Elections.

SEC. 23. That every person accepting an election or nomination as an officer shall appear before an examining board, to be appointed by the commanding general, which board shall examine said officer as to his military and other qualifications. If any officer shall fail to appear before the board of examination within thirty days after being notified,

Examinations.

<sup>1</sup>Section 21 of the act of March 1, 1889, reorganizing the District of Columbia militia, requires that captains and lieutenants of companies shall be elected by the enlisted men of the same. Held that this enactment would prevent the assignment to a company of an officer not first elected thereby. So that it would require that such officers be appointed as officers of the particular companies by which they had been elected, and would not permit of their appointment simply to the arm of service, as in the Army. (Dig. Opin. J. A. Gen., 22, par. 17.)

or shall fail to pass a satisfactory examination, the fact shall be certified by the board to the commanding general, who shall thereupon declare the election or nomination of such officer null and void. If, in the opinion of the board such officer is competent, and otherwise qualified, they shall certify the fact to the commanding general, who shall thereupon recommend him to the President for commission.

Discharges.

SEC. 24. That a commissioned officer may be honorably discharged—

Upon tender of resignation;

Upon disbandment of the organization to which he belongs;

Upon report of a board of examination, or for failure to appear before such board when ordered.

He may be dismissed upon the sentence of a court-martial; conviction in a court of justice of an infamous offense.

Non-commissioned officers. THE APPOINTMENT AND REDUCTION OF NON-COMMISSIONED OFFICERS.

Appointment.

SEC. 25. That non-commissioned staff officers shall be appointed by the permanent commander of the organization to which they belong; and permanent commanders of battalions shall appoint the non-commissioned officers of companies, upon the written nomination of the respective captains; but they may withhold such appointment if, in their judgment, there be proper cause; non-commissioned officers of unattached companies shall be appointed by their respective captains. The permanent commander of any battalion or unattached company may reduce to the ranks any company non-commissioned officers of his command.

Enlistment.

ENLISTMENT AND DISCHARGE OF SOLDIERS.

Term.

SEC. 26. Enlistment in the National Guard shall be for the term of three years: *Provided, however,* That any soldier who may have received an honorable discharge, by reason of the expiration of his term of service, may, within thirty days thereafter, re-enlist for a term of one, two, or three years, to date from the expiration of his previous term. All terms of service, except in case of re-enlistment, shall commence at noon on the day of enlistment, and expire at noon on the day of discharge.

Re-enlistment.

Oath, etc.

SEC. 27. Every person enlisting in the National Guard shall sign an enlistment paper which shall contain an oath of allegiance to the United States. The requisites and regulations for enlistment and the form of enlistment paper

and oath for enlisting men, shall be prescribed by the commanding general.

SEC. 28. That no enlisted man shall be honorably discharged before the expiration of his term of service, except by order of the commanding general, and for the following reasons:

Discharges:  
Honorable.

Upon his own application, approved by the commanding officer of his company, and by superior commanders;

Upon removal from the District;

Upon disability, established by certificate of medical officer;

To accept promotion by commission;

Whenever, in the opinion of the commanding general, the interest of the service demand such discharge. Dishonorable.

SEC. 29. That enlisted men shall be dishonorably discharged by order of the commanding general:

To carry out the sentence of a court-martial;

Upon conviction of felony in a civil court;

Upon expulsion from his company, in accordance with its by-laws or regulations;

Upon discovery of re-enlistment after previous dishonorable discharge. Certificate of discharge.

SEC. 30. That every soldier discharged from the service of the District shall be furnished with a certificate of such discharge, which shall state clearly the reasons therefor. Dishonorable discharges will have the word "dishonorable" written or printed diagonally across their faces, in large characters, with red ink, and the re-enlistment clause will be erased by a line.

#### ARMS, UNIFORMS, AND EQUIPMENTS.

Arms, etc.

SEC. 31. That the Uniforms, arms, and equipments of the National Guard shall be the same as prescribed and furnished to the army of the United States. Every organization of the National Guard shall be provided with such ordnance and ordnance stores, clothing, camp and garrison equipage, quartermaster's stores, medical supplies, and other military stores, as may be necessary for the proper training and instruction of the force and for the proper performance of the duties required under this act. Such property shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general, upon his requisitions for the same. The property so issued shall remain and continue to be the property of the United States, and shall be accounted for

To be issued by  
Secretary of War.



by the commanding general at such times, in manner, and on such forms, as the Secretary of War may require.<sup>1</sup>

Regulations for  
issue, care, etc.

SEC. 32. That the commanding general may transfer all public property, received by him for the use of the National Guard under the provision of this act, to the several departmental officers of the general staff, and may make and prescribe regulations for its issue by them, and for its care and preservation by the officers or soldiers to whom issued.

Returns, etc.

SEC. 33. That every officer receiving public property for military use shall be accountable for the articles so received by him, and shall make returns of such property at such times, in such manner, and on such forms as may be prescribed. He shall be liable to trial by court-martial for neglect of duty, and also make good to the United States the value of all such property defaced, injured, destroyed or lost, by any neglect or default on his part, to be recovered in an action of tort, or by any other action at law, to be instituted by the judge-advocate-general of the militia at the order of the commanding general. All money received on account of loss or damages shall be paid in the Treasury of the United States, and shall be accounted for by the commanding general in his returns to the Secretary of War.

Punishment  
for selling, etc.,  
public property.

SEC. 34. That any officer or soldier who shall sell, dispose of pawn or pledge, willfully destroy or injure, or retain after proper demand made, any public property issued under the provisions of this act, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for not exceeding two months, or by a fine not exceeding one hundred dollars, or by both; and it is hereby made the duty of the judge of the police court of the District of Columbia, upon information filed or complaint, made under oath, to issue process for the arrest of the offender, and to cause him to be brought before the police court to be dealt with according to the provisions of this section.

Liability of  
officers.

SEC. 35. That until an officer, or his legal representative shall have received notice that the property accounts of such officer have been examined and found correct, the liability of such officer, or of his estate, for public property for which he is or may have been responsible shall be in no way affected by resignation, discharge, change in official position, or death. Upon the death or desertion of an officer

<sup>1</sup> Held that the "military stores" required by section 31 of the act of March 1, 1889, to be furnished for the militia of the District of Columbia, did not include copies of the Infantry Drill Regulations. (Dig. Opin. J. A. Gen., 521, par. 14.)

Held that the clothing and camp and garrison equipage issued to the District of Columbia militia, under section 31 of the act of March 1, 1889, was properly to be inspected by militia, not by army officers; and that the condemned portion, if any, was to be reported by the commanding general of the militia to the Secretary of War, to be disposed of as he should direct. (Ibid., par. 15.) See also act of July 23, 1888, paragraph 1287, *post*.

responsible for public property his immediate commander shall at once cause the property for which such officer was responsible to be collected, and a correct inventory made by actual count and examination; which inventory shall be forwarded to the commanding general, in order that any deficiency may be made good from the estate of the deceased or deserting officer; compensation for such deficiency may be recovered in the manner provided in section thirty-four.

SEC. 36. That property issued or provided under the provisions of this act which becomes unfit for use, and is condemned as unserviceable shall be reported by the commanding general to the Secretary of War, and shall be disposed of as may be directed by him.

Unserviceable property.

SEC. 37. That any organization of the active militia may, with the approval of the commanding general, and at its own expense, adopt any other uniform than that issued to it; but such uniform shall not be worn when such organization is on duty under the orders of the commanding general except by his permission.

Distinctive uniforms.

SEC. 38. That organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought, in the name of such commanding officer, before any justice of the peace, with the right of appeal to the supreme court of the District of Columbia, or before the supreme court of the District of Columbia; and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him.

Right to own personal property.

Actions for injuries to.

SEC. 39. That the quartermaster-general of the militia shall provide, by rental or otherwise, such armories for the National Guard as may be allowed and directed by the commanding general. He shall also provide each organization with such lockers, closets, gunracks, and cases or desks, as may be necessary for the care, preservation, and safe-keeping of the arms, equipments, uniforms, records, and other military property in their possession. He shall also provide suitable rooms for the offices of the commanding general and staff, for the keeping of books, the transaction of business, and the instruction of officers, and also suitable places for the storage and safe-keeping of public property.

Armories to be provided.

## Duties.

## MILITARY DUTIES.

Drills, etc., to  
be a military  
duty.

SEC. 40. That any drill, parade, encampment, or duty that is required, ordered, or authorized to be performed under the provisions of this act, shall be deemed to be a military duty, and while on such duty every officer and enlisted man of the National Guard shall be subject to the lawful orders of his superior officers, and for any military offense may be put and kept under arrest or under guard for a time not extending beyond the term of service for which he is then ordered.

Prescribing  
drills, etc.

SEC. 41. That the commanding general shall prescribe such stated drills and parades as he may deem necessary for the instruction of the National Guard, and may order out any portion of the National Guard for such drills, inspections, parades, escort, or other duties, as he may deem proper. The commanding officer of any regiment, battalion, or company may also assemble his command, or any part thereof, in the evening for drill, instruction, or other business, as he may deem expedient; but no parade shall be performed by any regiment, battalion, company, or part thereof, without the permission of the commanding general.

Annual inspection.

SEC. 42. That an annual inspection and muster of each organization of the National Guard, and an inspection of their armories and of public property in their possession, shall be made at such times and places as the commanding general may order and direct.

Camp duty.

SEC. 43. That the National Guard shall perform not less than six consecutive days of camp duty in each year, at such time as may be ordered by the commanding general; and the quartermaster-general of the militia, subject to the approval of the commanding general, shall provide, by rental or otherwise, a suitable camp ground for the annual encampment of the militia, make the necessary provisions thereon for the encampment, and provide necessary transportation to and from the same for baggage and supplies.

Use of Wash-  
ington Barracks.

SEC. 44. The National Guard shall have the use of the drill grounds and rifle-range at the Washington Barracks, subject to the approval of the Secretary of War, and the commanding general of the militia shall provide such additional targets and accessories as may be necessary for the use of the militia.

Suppression of  
riots, etc.

SEC. 45. That when there is in the District of Columbia a tumult, riot, mob, or a body of men acting together by force with attempt to commit a felony or to offer violence

to persons or property, or by force and violence to break and resist the laws, or when such tumult, riot, or mob is threatened, it shall be lawful for the commissioners of the District of Columbia, or for the United States marshal for the District of Columbia, to call on the commander-in-chief to aid them in suppressing such violence and enforcing the laws; the commander-in-chief shall thereupon order out so much and such portion of the militia as he may deem necessary to suppress the same, and no member thereof who shall be thus ordered out by proper authority for any such duty shall be liable to civil or criminal prosecution for any act done in the discharge of his military duty.

SEC. 46. That no officer or soldier of the National Guard, <sup>Excuses from duty.</sup> when ordered on duty to aid the civil authorities, or when ordered into the service of the United States in obedience to the call or order of the President, shall be excused from such duty except upon the certificate of the surgeon of his command of physical disability, such certificate to be presented to the commanding general in case of an officer, or to his company commander in case of a soldier. If such officer or soldier fail to furnish such excuse he shall be tried and punished by a court-martial. For absence from any other military duty required or ordered under the provisions of this act the penalty shall be such as may be prescribed by the commanding general, or the by-laws of the organization to which the officer or soldier belongs.

SEC. 47. That the United States forces or troops, or any <sup>Parade, etc., to have right of way.</sup> portion of the militia, parading, or performing any duty according to law, shall have the right of way in any street or highway through which they may pass: *Provided*, That the carriage of the United States mails, the legitimate <sup>Mail, fire department, etc.</sup> functions of the police, and the progress and operations of fire-engines and fire departments shall not be interfered with thereby.

SEC. 48. That every commanding officer, when on duty, <sup>Rules for parades and encampments.</sup> may ascertain and fix necessary bounds and limits to his parade or encampment. Whoever intrudes within the limits of the parade or encampment after being forbidden, or whoever shall interrupt, molest, or obstruct any officer or soldier while on duty, may be put and kept under guard until the parade, encampment, or duty be concluded: and the commanding officer may turn over such person to any police officer, and said police officer is required to detain him in custody for examination or trial before the police court, and the judge thereof may punish such offense by a fine not exceeding twenty-five dollars.

Governmental  
employees.

SEC. 49. That all officers and employees of the United States and of the District of Columbia who are members of the National Guard shall be entitled to leave of absence from their respective duties, without loss of pay or time, on all days of any parade or encampment ordered or authorized under the provisions of this act.

Military courts.

#### MILITARY COURTS.

Courts of in-  
quiry.

SEC. 50. Courts of inquiry, to consist of not more than three officers, may be ordered by the commanding general, for the purpose of investigating the conduct of any officer, either at his own request or on a complaint or charge of conduct unbecoming an officer. Such court of inquiry shall report the evidence adduced, a statement of facts, and an opinion thereon, when required, to the commanding general, who may, in his discretion, thereupon order a court-martial for the trial of the officer whose conduct has been inquired into.

Courts-martial.

SEC. 51. That general courts-martial for the trial of commissioned officers or enlisted men shall be ordered by the commanding general at such times as the interests of the service may require, and shall consist of not less than five nor more than thirteen officers, and a judge-advocate, none of whom shall be of less rank than the accused, when it can be avoided.

Trials of enlist-  
ed men.

SEC. 52. That for the trial of enlisted men for all minor offenses the commanding officer of each battalion and unattached company shall, at such times as may be necessary, appoint courts-martial. Such battalion and company courts-martial shall consist, for a battalion, of one officer, whose rank is not below that of captain; and for a company, of a lieutenant. Such courts shall have power, subject to the approval of the officer ordering the court, to sentence to be reprimanded by said officer in battalion or company orders; or, in case of a company non-commissioned officers, to be reduced to the ranks, or to pay such fines as may be imposed and allowed by the regulations or by-laws of the organization to which the accused belongs; and such court may, with the approval of the commanding general, sentence to be reprimanded in general orders or to be dishonorably discharged.

Proceedings in  
trials.

SEC. 53. That the president of a general court-martial or court of inquiry, and the officer constituting a battalion or company court-martial, shall have power to administer the usual oath to witnesses, and may issue summonses for all witnesses whose attendance at such court may, in his opinion, be necessary, and any officer or soldier failing to

serve such summons, and any witness failing to appear and testify when so summoned, shall be liable to trial by court-martial.

SEC. 54. That in all courts-martial and courts of inquiry the arraignment of the accused, the proceedings, trial, and record shall in all respects conform as nearly as practicable to the regulations for the same in the Army of the United States. To conform to Army trials.

#### EXPENSES AND ALLOWANCES.

SEC. 55. That there shall be allowed for the general expenses of the militia such sums as may be necessary for the rental and furnishing of offices for headquarters, stationery, postage, printing and issuing orders, advertising orders, providing necessary blanks for the use of the militia, the cost of storing, caring for, and issuing all public property, and such other contingent expenses, not herein specially provided for, as may be estimated and appropriated for; the accounts for which shall be certified to by the officer receiving the service or property charged for, approved by the commanding general, and paid in the manner provided in section sixty. General expenses.

SEC. 56. That during the annual encampment, and on every duty or parade ordered by the commanding general, there shall be allowed and paid for each day of service: To each member of the regularly enlisted band, four dollars; to each member of the regularly enlisted corps of field music, two dollars; to the chief musician, eight dollars, and to the principal musician, six dollars. In event there is no enlisted band or field music, or not a sufficient number of either, the commanding general may authorize the employment of such as he may deem necessary for the occasion. The payments for bands of music and drum corps shall be made in the manner provided in section sixty. Payment to band, etc.

SEC. 57. That during the annual encampment, or when ordered on duty to aid the civil authorities, the National Guard shall be furnished with subsistence stores, of the kind, quality, and amount allowed and prescribed by the Army. Such stores shall be issued from the stores and supplies appropriated for the use of the Army, upon the approval and by the direction of the Secretary of War, to the commanding general upon his requisitions for the same. Subsistence while on duty.

SEC. 58. That the commanding general shall annually transmit to the Commissioners of the District of Columbia an estimate of the amount of money required for the next ensuing fiscal year to pay the expenses authorized by this act, and the said Commissioners shall include the same in their annual estimates of appropriations for the District; and all money appropriated to pay the expenses authorized Estimates.

**Disbursements.** by this act shall be disbursed by the Commissioners of the District of Columbia, upon vouchers duly certified and approved by the commanding general, and accounted for by them in the same manner as all other moneys appropriated for the expenses of the District.

#### GENERAL PROVISIONS.

**Regulations.** SEC. 59. That companies, battalions, or regiments may adopt constitutional articles of agreement or by-laws, subject to the approval of the commander-in-chief, for the government of matters relating to the civic affairs of their respective organizations, the regulation of fines for non-performance of duty, and the determination of causes upon which excuses from fines may be based: *Provided, however,* That such articles or rules shall not be repugnant to law or the regulations for the government of the militia: *And provided further,* That the articles or rules adopted by any company or battalion shall not be repugnant to the articles or rules adopted for the general government of the regiment or battalion to which it belongs. Certified copies of such articles or rules, with like copies of all alterations, as finally approved by the commanding general, shall be deposited in the office of the adjutant-general.

Not to be repugnant to law, etc.

Company and battalion rules.

Duties of officers.

SEC. 60. The departmental and military duties of the officers provided for in this act shall be correlative with those discharged by similarly designated officers in the Army of the United States.

Discipline.

SEC. 61. That the system of discipline and field-exercise ordered to be observed by the Army of the United States, or such other system as may hereafter be directed for the militia by-laws of the United States, shall be observed by the National Guard.

Commanding general to make regulations.

SEC. 62. That the commanding general, subject to the approval of the commander-in-chief, is authorized to make and publish regulations for the government of the militia in all matters not specifically provided for by law, conforming the same to the practice and regulations of the Army so far as they may be applicable.

Repeal.  
V. 2, p. 215.  
R. S. D. C., ch. 37, p. 138.

SEC. 63. That the act "more effectually to provide for the organization of the militia of the District of Columbia," approved March third, eighteen hundred and three, is hereby repealed. *Act of March 1, 1889 (25 Stat. L., 772).*

Issues to be made from Army stores.  
July 23, 1888,  
v. 25, p. 627.

1287. That the Secretary of War be, and he is hereby, authorized to issue from the stores of the Army such arms, ordnance stores, quartermasters' stores, and camp equipage, to the militia of the District of Columbia as he may deem necessary for their proper equipment and instruction.

The property so issued shall remain and continue to be the property of the United States, and shall be annually accounted for in such manner as the Secretary of War may require. *Act of July 23, 1888 (25 Stat. L., 627).*

1288. That hereafter all leases and contracts involving expenditures on account of the militia shall be made by the Commissioners of the District of Columbia; and the appropriations for the militia shall be disbursed only upon vouchers duly authorized by the Commissioners, for which they shall be held strictly accountable. And no contract shall be made or liability incurred under appropriations for the militia of the District of Columbia, beyond the sums herein appropriated. *Act of June 11, 1896 (29 Stat. L., 412).*

Leases, etc., to be made by Commissioners of the District of Columbia.  
June 12, 1896, v. 29, p. 412.

#### TERRITORIAL MILITIA.

1289. The executive power of each Territory shall be vested in a governor, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. He shall reside in the Territory for which he is appointed, and shall be commander-in-chief of the militia thereof. He may grant pardons and reprieves, and remit fines and forfeitures, for offenses against the laws of the Territory for which he is appointed, and respites for offenses against the laws of the United States, till the decision of the President can be made known thereon. He shall commission all officers who are appointed under the laws of such Territory, and shall take care that the laws thereof be faithfully executed.

The Territorial militia.  
July 19, 1876, c. 212, v. 19, p. 91.  
N. Mex., Sept. 9, 1850, c. 49, s. 3, v. 9, p. 447; Utah, Sept. 9, 1850, c. 51, s. 2, v. 9, p. 453; Wash., Mar. 2, 1853, c. 90, s. 2, v. 10, p. 173; Colo., Feb. 28, 1861, c. 59, s. 2, v. 12, p. 172; Dak., Mar. 2, 1861, c. 86, s. 2, v. 12, p. 239; Ariz., Feb. 24, 1863, c. 56, s. 2, v. 12, p. 665; Idaho, Mar. 3, 1863, c. 117, s. 2, v. 12, p. 809; Mont., May 26, 1864, c. 95, s. 2, v. 13, p. 86; Wyo., American Ins. Sec. 1841, R. S.

Justices of the peace and all general officers of the militia in the several Territories shall be elected by the people in such manner as the respective legislatures may provide by law.

Election of justices of the peace and militia officers.  
June 15, 1844, c. 69, s. 2, v. 5, p. 671.  
Sec. 1856, R. S.

All township, district, and county officers, except justices of the peace and general officers of the militia, shall be appointed or elected in such manner as may be provided by the governor and legislative assembly of each Territory; and all other officers not herein otherwise provided for, the governor shall nominate, and by and with the advice and consent of the legislative council of each Territory, shall appoint; but, in the first instance, where a new Territory is hereafter created by Congress, the governor alone may appoint all the officers referred to in this and the preceding section and assign them to their respective townships, districts, and counties; and the officers so appointed shall hold their offices until the end of the first session of the legislative assembly.

Other officers.  
N. Mex., Sept. 9, 1850, c. 49, s. 8, v. 9, p. 449; Utah, Sept. 9, 1850, c. 51, s. 7, v. 9, p. 455; Wash., Mar. 2, 1853, c. 90, s. 7, v. 10, p. 175; Colo., Feb. 28, 1861, c. 59, s. 7, v. 12, p. 174; Ariz., Feb. 24, 1863, c. 56, s. 2, v. 12, p. 665; Dak., Mar. 2, 1861, c. 86, s. 7, v. 12, p. 241; Idaho, Mar. 3, 1863, c. 117, s. 7, v. 12, p. 811; Mont., May 26, 1864, c. 95, s. 7, v. 13, p. 88; Wyo., July 25, 1868, c. 235, s. 7, v. 17, p. 180.  
Sec. 1857, R. S.



Arms to be issued to Territories and border States.

Joint Res. No. 13, July 3, 1876, v. 19, p. 214; Joint Res. No. 7, Mar. 3, 1877, v. 19, p. 410; May 16, 1878, v. 20, p. 61.

**1290.** That the Secretary of War is hereby authorized to cause to be issued to the Territories, and the States bordering thereon, such arms as he may deem necessary for their protection, not to exceed one thousand to said States and Territories each, and ammunition for the same, not to exceed fifty ball cartridges for each arm: *Provided*, That such issues shall be only from arms owned by the Government which have been superseded and no longer issued to the Army: *Provided however*, that said arms shall be issued only in the following manner, and upon the following conditions, namely, upon the requisition of the governors of said States or Territories showing the absolute necessity of arms for the protection of the citizens and their property against Indian raids into said States or Territories also that militia companies are regularly organized and under control of the governors of said States or Territories to whom said arms are to be issued, and that said governor or governors shall give a good and sufficient bond for the return of said arms or payment for the same at such time as the Secretary of War may designate: *Provided*, That the quota to the States now authorized by law shall not hereby be diminished.<sup>1</sup> *Joint Res. No. 13, July 3, 1876 (19 Stat. L., 214).*

Additional arms, etc., for Territories.  
Joint Res. No. 26, June 7, 1878, v. 20, p. 252.

**1291.** That the Secretary of War is hereby authorized to cause to be issued to each of the Territories of the United States (in addition to arms and ammunition the issue of which has been heretofore provided for), such arms not to exceed one thousand in number as he may deem necessary, and ammunition for the same not to exceed fifty ball cartridges for each arm: *Provided*, That such issue shall be only from arms owned by the Government of the United States which have been superseded and no longer issued to the Army: *And provided further*, That said arms shall be issued only in the following manner, and upon the following conditions, namely, upon the requisition of the governors of said Territories showing the absolute necessity for arms for the protection of citizens and their property against hostile Indians within or of Indian raids into such Territories: *And provided further*, That the said governor or governors of said Territories to whom the said arms may be issued shall give good and sufficient bond or bonds for the return of said arms, or payment therefor, at such time as the Secretary of War may designate, as now provided for by law. *Joint Res. No. 26, June 7, 1878 (20 Stat. L., 252).*

<sup>1</sup> Superseded as to the Territories by joint resolution No. 26, June 7, 1878 (20 Stat. L., 252), paragraph 1291, *post*. See also paragraphs 1276 and 1277, *ante*.

## CHAPTER XXXV.

### MILITARY TRIBUNALS—COURTS-MARTIAL— COURTS OF INQUIRY.

- | Par.  | Par.  |
|---|---|
| 1292. Arrest of officers.   | 1315. Confirmation of death sentence; offenses in time of war.    |
| 1293. Confinement of enlisted men.  | 1316. Confirmation of sentences of dismissal in time of peace.    |
| 1294. Limit of time in case of arrest or confinement.                                   | 1317. The same; confirmation by division or brigade commanders.   |
| 1295. The same.   | 1318. The same; sentences respecting general officers.            |
| 1296. Written statement of offense, refusal of provost-marshal to receive; penalty.     | 1319. The same; confirmation by officer ordering court.           |
| 1297. Report of prisoners.  | 1320. The same; suspension of sentences pending Executive action. |
| 1298. Release of prisoner; permitting escape.   | 1321. Pardon and mitigation of punishments.                       |
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| 1300. Who may convene in time of war.   | 1323. Regimental courts-martial.                                  |
| 1301. Composition.  | 1324. Redress of wrongs.  |
| 1302. When requisite number is not present at a post.                                   | 1325. Field officers' courts.                                     |
| 1303. Regular officers not to sit on court to try officers or soldiers of other forces. | 1326. Confirmation of sentences.                                  |
| 1304. Officers of Marines and of Regular Army may be associated on courts.              | 1327. Garrison courts-martial.                                    |
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| 1312. Reporter.   | 1335. No person to be twice tried for same offense.               |
| 1313. Record, disposition of.   | 1336. Limitation on time of prosecution.                          |
| 1314. Approval of sentence by officer ordering court.                                   | 1337. Limitation on prosecutions for desertion in time of peace.  |
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Par.	Par.
1339. Composition.	1350. Thesame; in indictments for embezzlements, etc.
1340. Oaths of members and recorder.	1351. Copies of returns in Returns Office.
1341. Power to summon and examine witnesses.	1352. Extracts from Journals of Congress.
1342. Opinion; when given.	1353. Copies of records, etc., in offices of United States consuls.
1343. Authentication of proceedings.	1354. Authentication of legislative acts, and proof of judicial proceedings in States.
1344. Proceedings; when used as evidence.	1355. Proofs of records, etc., kept in offices not pertaining to courts.
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## ARREST AND CONFINEMENT.

Arrest of officers.  
65 Art. War.

**1292.** Officers charged with crime shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer.<sup>1</sup> And any officer

<sup>1</sup>An officer may be put in arrest by a verbal or written order or communication from an authorized superior, advising him that he is placed in arrest or will consider himself in arrest or in terms to that effect. The reason for the arrest need not be specified. At the same time he is usually required to surrender his sword, though this formality may be dispensed with. But an arrest, though an almost invariable, is not an essential preliminary to a military trial. To give the court jurisdiction it is not necessary that the accused should have been arrested; it is sufficient if he voluntarily, or in obedience to an order directing him to do so, appears and submits himself to trial. So neither the fact that an accused has not been formally arrested or arrested at all, nor the fact that having been once arrested and released from arrest he has not been rearrested before trial, can be pleaded in bar of trial or constitute any ground of exception to the validity of the proceedings or sentence. An officer is in no case entitled to demand to be arrested. (Dig. Opin. J. A. Gen., 169, par. 1.) See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 4-8.

The term "crime" is here employed in a general sense, referring to offenses of a military character, as well as to those of a civil character which are cognizable by court-martial. An offense in violation of this article is only committed when an officer, confined in "close arrest" to his quarters, leaves the same without authority. A breach of a mere formal arrest, or of any arrest not accompanied by confinement to quarters, would be an offense, not within this article, but under article 62. (*Ibid.*, p. 78, par. 1.)

Except in the class of cases indicated in article 24, only "commanding officers" can place commissioned officers in arrest. (See par. 897, *Army Regulations*, 1895.) The commanding officer thus authorized is the commander of the regiment, company, detachment, post, department, etc., in which the officer is serving. Where a company is included in a post command, the commander of the post rather than the company commander is the proper officer to make the arrest of a subaltern of the company. In the majority of cases, however, arrests are originally ordered by the authority by whom the court has been or is to be convened. (*Ibid.*, 170, par. 2.)

It is clearly to be inferred from paragraphs 897-898 of the *Army Regulations*, 1895, that unless other limits are specially assigned him, an officer in arrest must confine himself to his quarters. It is generally understood, indeed, that he can go to the mess house or other place of necessary resort. It is not unusual, however, for the commander, in the order of arrest, to state certain limits within which the officer is to be restricted, and, except in aggravated cases, these are ordinarily the limits of the post where he is stationed or held. An officer or soldier, though retained in close arrest, should be permitted to receive such visits from his counsel, witnesses, etc., as may be necessary to enable him to prepare his defense. (*Ibid.*, par. 3.)

The status of being in arrest is inconsistent with the performing of military duty. Placing an arrested officer or soldier on duty terminates his arrest. Releasing a soldier from arrest and requiring him to perform military duty, after his trial and while he is awaiting the promulgation of his sentence, can be justified only by an extraordinary exigency of the service. (*Ibid.*, par. 4.)

In all cases of "constructive" breach of arrest, such as exercising military authority, wearing sword, etc., the accused can not be charged under the sixty-fifth article,

who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.

*Sixty-fifth Article of War.*

**1293.** Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.<sup>1</sup>

Confinement of  
enlisted men.  
66 Art. War.

*Sixty-sixth Article of War.*

as the punishment is mandatory and authorizes the sentence of dismissal only in case of "leaving his confinement." (Ives, Mil. Law, 66.)

An officer is not privileged from arrest by virtue of being at the time a member of a general court-martial. But an arrest of an officer while actually engaged upon court-martial duty should, if possible, be avoided. (Dig. J. A. Gen., 170, par. 6.)

An officer under arrest is not disqualified to prefer charges. (Ibid., 171, par. 7.)

The imposition of an arrest affects in no manner the right of an officer or soldier to receive the pay and allowances of his rank. Except in a case of a deserter (see par. 129, Army Regulations, 1895) no legal inhibition exists to paying a soldier while in arrest—either before trial or while awaiting sentence—his regular pay and emoluments. (Ibid., par. 8.)

An arrest imposed by the Secretary of the Navy upon a chief of bureau in the Navy Department in the following terms, "You are placed under arrest, and you will confine yourself to the limits of the city of Washington," held not to constitute a restraint upon liberty sufficient "to justify the use of the writ of *habeas corpus*." (Wales v. Whitney, 114 U. S., 564.)

The principle of the common law by which a witness is protected from arrest (a) should in general be applied to military cases. If it can well be avoided an arrest should certainly not be imposed upon an officer or soldier while attending a court-martial as a witness. But such an arrest would constitute an irregularity only, and would not affect the validity of the proceedings of a trial to which a party thus arrested was subsequently subjected. (Dig. J. A. Gen., p. 171, par. 9.)

<sup>1</sup>A soldier while confined in arrest should not be fettered or ironed except where such extreme means are necessary to restrain him from violence, or there is good reason to believe that he will attempt an escape and he can not otherwise be securely held. (Ibid., par. 10. See also par. 909, A. R., 1895.)

Under the regulations (par. 907, A. R., 1895), soldiers in confinement awaiting action on the proceedings of their trials are assimilated to those awaiting trial, and both classes may, at the discretion of the commanding officer, be employed, separately from prisoners undergoing sentence, upon such labor as is habitually required of soldiers. More severe or other labor would not be legal, nor would labor with a police party consisting in whole or in part of men under sentence, however slight their sentence might be. (b) A soldier in arrest in quarters may be required to do cleaning or police work about his quarters which otherwise other soldiers would have to do for him. (Ibid., par. 11. See also, *ibid.*, 79, par. 1.) See also, *MANUAL FOR COURTS-MARTIAL*, pp. 4-8.

CHARGES AND SPECIFICATIONS.

*Charges and specifications.*—In our practice, unlike that of the English courts martial, a military charge properly consists of two parts—the technical "charge" and the "specification." The former designates by its name, particular or general, the alleged offense; the latter sets forth the facts supposed to constitute such offense. An accusation against an officer or soldier not thus separated in form would be irregular and exceptional in our practice, and, till amended, would not be accepted as a proper basis for proceedings under the code. (Dig. Opin. J. A. Gen., 224, par. 1.) See also, *MANUAL FOR COURTS-MARTIAL*, pp. 15-20.

*Framing of charges.*—The same particularity is not called for in military charges which is required in indictments. (c) The essentials of a charge are: (1) That it shall be laid under the proper article of war or other statute; (2) that it shall set forth (in the specification) facts sufficient substantially to constitute the particular offense. These essentials being observed, the simpler and less encumbered with verbiage and technical terms the charge is, the better, provided it be expressed in clear and intelligible English. However inartificial a pleading may be, it will properly be held sufficient as a legal basis for a trial and sentence, provided that the charge and

<sup>a1</sup> Greenl. Ev., sec. 316; Smythe v. Banks, 4 Dallas, 329.

<sup>b</sup> See G. O. 44, Division of the Atlantic, 1889.

<sup>c</sup> In regard to the proper form for a military charge, Attorney-General Cushing (7 Opins., 603) says: "There is no one of exclusive rigor and necessity in which to state military accusations." He adds further: "Trials by court-martial are governed by the nature of the service, which demands intelligible precision of language, but regards the substance of things rather than their forms. \* \* \* The most bald statement of the facts alleged as constituting the offense, provided the legal offense itself be distinctively and accurately described in such terms of precision as the rules of military jurisprudence require, will be tenable in court-martial proceedings, and will be adequate ground work of conviction and sentence." So it is observed by Attorney-General Wirt (1 Opins., 286) that "all that is necessary" in a military charge is that it be "sufficiently clear to inform the accused of the military offense for which he is to be tried, and to enable him to prepare his defense." And see Tytler, 209; Kennedy, 69. It is ably remarked by Gould (Pleading, p. 4) that "all pleading is essentially a logical process;" and that, in analyzing a correct pleading, "if we take into view, with what is expressed, what is necessarily supposed or implied, we shall find in it the elements of a good syllogism." But it can hardly be expected that military charges in general will stand this test.

Limit of time  
in case of arrest  
and confinement.  
70 Art. War.

**1294.** No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled. *Seventieth Article of War.*

specification, taken together, amount to a statement of a military offense either under a specific article or under the general article, No. 62. (*Ibid.*, par. 2.)

There can be no legal objection to charging an offense as a "violation of" a particular article of war, although, in general, it will be preferable to charge it by its familiar and received name—as "drunkenness on duty," "misbehavior before the enemy," "desertion," etc. (*Ibid.*, 225, par. 3.)

Where an offense is clearly defined in a specific article, it is irregular and improper to charge it under another specific article. So, where the article in which the offense is defined makes it punishable with a specific punishment to the exclusion of any other, it is error to charge it under an article, such as the sixty-second, which leaves the punishment to the discretion of the court. On the other hand, it is equally erroneous to charge under a specific article, making mandatory a particular punishment, an offense properly charged only under article 62. (*Ibid.*, par. 4.)

Where a specific offense is charged (i. e., an offense made punishable by an article other than the general—sixty-second—article) and the specification does not state facts constituting such specific offense, the pleading will be insufficient as a pleading of that offense. Legal effect may, however, be given to a pleading if the charge and specification taken together amount to an allegation of an offense cognizable by a court-martial under article 62. And in all cases—whatever be the form of the charge or specification—if the two are not inconsistent, and, taken together, make out an averment of a neglect or disorder punishable under this general article, the pleading will be sufficient in law and will constitute a legal basis for a conviction and sentence. (*Ibid.*, p. 226, par. 6.)

It is illogical and faulty pleading to charge a secondary offense in lieu of the actual or principal offense, of which that charged was merely a consequence or incident. But where the act committed involves several distinct offenses the party may properly be arraigned upon the same number of separate charges. And all the offenses with which an officer or soldier may be at one time chargeable should if practicable (and if the same are sufficiently grave) be charged and brought to trial together. Undue multiplication, however, of charges, or forms of charge, is to be avoided; thus charges should not in general be added for minor offenses which were simply acts included in and going to make up graver offenses duly charged. It may, indeed, sometimes be expedient, where the offenses are slight in themselves, and it is deemed desirable to exhibit a continued course of conduct, to wait before preferring charges till a series of similar acts have been committed, provided the period be not unreasonably prolonged; but in general charges should be preferred and brought to trial immediately or presently upon the commission of the offenses. Anything like an accumulation or saving up of charges through a hostile animus on the part of the accuser is discountenanced by the sentiment of the service. (a) (*Ibid.*, 226, par. 7.)

The prosecution is at liberty to charge an act under two or more forms where it is doubtful under which it will more properly be brought by the testimony. (b) In the military practice the accused is not entitled to call upon the prosecution to "elect" under which charge it will proceed in such or, indeed, any case. (*Ibid.*, 227, par. 8.)

Where there are two sets of charges against an accused they should, if practicable, be consolidated and one trial be had upon the whole, instead of two trials, one upon each set. But after the accused has been arraigned upon certain charges, and has pleaded thereto, and the trial on the same has been entered upon, new and additional charges, which the accused has had no notice to defend, can not be introduced or the accused required to plead thereto. Such charges should be made the subject of a separate trial, upon which the accused may be enabled properly to exercise the right of challenge to the court and effectively to plead and defend. (*Ibid.*, par. 9.)

Such loose and indefinite forms of charge as "fraud," "worthlessness," "inefficiency," "habitual drunkenness," and the like, will be avoided by good pleaders. Such charges, indeed, in connection with specifications setting forth actual military neglects or disorders (not properly chargeable under specific articles), may be sustained as equivalent to charges of "conduct to the prejudice of good order and military discipline." But a charge of "worthlessness," with specifications setting forth repeated instances of arrests, confinements in the guardhouse, or trials and convictions for slight offenses of the accused, held an insufficient pleading; such instances not constituting military offenses, but merely the punishments or penal consequences of such offenses. (What is really called for in such a case is a discharge of the soldier under the fourth article of war.) A specification averring a general incapacity induced by habitual intoxication does not set forth a military offense. The accused in such a case should be charged with the acts of drunkenness committed as separate and distinct instances of offense. (c) (*Ibid.*, par. 10.)

A charge expressed in too general terms is faulty and imperfect; the accused is entitled to know for what particular act he is called to account. Thus a specification under article 62, in a case of an officer, which set forth, not a specific act of offense, but an habitual course of conduct as incapacitating the accused for service or for the performance of his proper duty, held seriously defective and subject to be stricken out on motion. For such conduct, indeed, the remedy is not by charge and trial, but by retirement under section 1252, Revised Statutes. (*Ibid.*, 236, par. 34.)

A charge expressed in the alternative—either under article 17 or article 60—is

a See G. C. M. O. 71, Headquarters of the Army, 1879.

b "For the purpose of meeting the evidence as it may transpire." *State v. Bell*, 27 Md., 675.

c See G. O. 11, War Department, 1873.

1295. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him

The same.  
71 Art. War.

irregular and defective, and, upon motion, may be stricken out or required to be amended. (*Ibid.*, par. 35.)

The specification should be appropriate to the charge. A charge of "conduct to the prejudice of good order and military discipline," with a specification setting forth a violation of a specific article, is an irregular and defective pleading, and so of course is a charge of a specific offense with a specification describing not that but a different specific offense, or a simple disorder or neglect of duty. (*Ibid.*, p. 228, par. 12.)

Where a specification to a charge preferred by a superior against an inferior officer, instead of referring to the former in the third person, alleged that the accused addressed abusive language to "me," and committed an assault upon "me," without naming or otherwise indicating the subject of the abuse or assault, *held* that such a form, though supported by some of the English precedents, was not sanctioned by our practice, and that, on objection being made to the same by the accused, the court would properly either require that the specification be amended, or that, in incorporating the charge in the record, the name of the preferring officer be added. (*Ibid.*, p. 229, par. 14.)

A specification, in alleging the violation of an order which has been given in writing, or of any written obligation—as an oath of allegiance, parole, etc.—should preferably set forth the writing verbatim, or at least state fully its substance, and then clearly detail the act or acts which constituted its supposed violation. (*Ibid.*, 230, par. 16.)

*Allegations of time and place.*—The time and place of the commission of the offense charged should properly be averred in the specification in order that it may appear that the offense was committed within the period of limitation fixed by the one hundred and third article, and in order to enable the accused to understand what particular act or omission he is called upon to defend. (a) A reasonably exact allegation of the time is also important in some cases—especially those of desertion and absence without leave—in order that the accused, if subsequently brought to trial for the same offense, or, what is the same thing in law, for an offense included in the original offense, may be enabled (by an exhibition of the record) properly to plead a former acquittal or conviction of that offense. (*Ibid.*, par. 17.)

Where the exact time or place of the commission of the offense is not known it is frequently preferable to allege it as having occurred "on or about" a certain date or time, or "at or near" a certain locality, rather than to aver it as committed on a particular day or between two specified days, or at a particular place. There is no defined construction to be placed upon the words "on or about," as used in the allegation of time in a specification. The phrase can not be said to cover any precise number of days or latitude in time. It is ordinarily used in military pleading for the purpose of indicating some period, as nearly as can be ascertained and set forth, at or during which the offenses charged are believed to have been committed, in cases where the exact day can not well be named. And the same is to be said as to use of the words "at or near" in connection with the averment of place. These terms "on or about" and "at or near" are, however, not infrequently (though unnecessarily) employed in practice where the exact time or place is known and can readily be alleged. (*Ibid.*, par. 18.)

The allegation of time in a specification should be as nearly defined as the facts will permit; but where the act or acts charged extended over a considerable space of time it may be necessary to cover such period in the allegation. Thus allegations of "from March to September, 1887," and "from May to October, 1888," have been countenanced in a case in which the accused was charged with the neglect of a duty the performance of which was thus continuous. (See G. C. M. O. 21 of 1889.) (*Ibid.*, 236, par. 36.)

The same exactness in the averment of time is in general scarcely required where the offense charged is one of omission as where it is one of the commission of a specific act. It is sufficient in the former case to allege that the offense occurred between certain named dates not unreasonably separated. So, an offense of commission, which probably was not completed, or may not have been completed on any particular day, may be similarly charged. Thus *held* that the allegations of time and place were sufficient in a specification in which it was set forth that the offense charged (which consisted of an improper disposition of public property) was committed by the accused "while en route between Austin, Tex., and Waco, Tex., between the 5th and 25th days of May, 1867." (*Ibid.*, 231, par. 19.)

But where it was alleged in a specification that the accused was drunk on duty at some time or times during a period of seventy days, *held* that the specification did not give sufficient notice to the accused of the specific offense which he was required to defend, and was therefore uncertain and insufficient. (b) (*Ibid.*)

Where a specification alleged that the accused was absent without leave at various times between two dates, twenty days apart, *held* that the same was defective and subject to exception as being *double*, each such absence being a substantive and dis-

a As to the latitude allowable in the allegation of time in military pleadings, compare 1 Opin. Att. Gen., 295, 296. In the civil practice, "nothing is better settled than that proof of guilt is not confined to the day mentioned in the indictment. It may extend back to any period previous to the finding of the bill and within the statutory limit for prosecuting the offense." *McBryde v. State*, 34 Ga., 203.

b Compare cases in G. O. 193, Army of the Potomac, 1862; G. O. 98, Department of New Mexico, 1862.

within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities

tinct offense. (a) *X*, 471. But where the specification to a charge of violation of the sixtieth article alleged the presentation by the accused of a fraudulent claim for rations furnished for recruits and also for lodgings furnished for the same recruits at the same time, *held* that the specification related to one transaction and was not therefore to be necessarily regarded as *double* or defective, in view of the liberal rules of pleading applicable to military charges. (*Ibid.*, p. 229, par. 15.)

Where time or place is omitted to be averred, or is averred without sufficient definiteness, and the defect is excepted to by the accused on being called upon to plead, the court will probably direct that an amendment be made. But where in either such case no objection is interposed by the accused, the proceedings will be sufficient in law provided the time and place of the offense can be made out with reasonable certainty from the testimony in connection with the specifications. If otherwise, the proceedings will, where practicable, properly be returned to the court for correction, or, where this can not be done, will, in general, probably be disapproved. And where the offense is alleged to have been committed on a particular day, and the evidence shows that it was committed on quite a different day, in such case, provided time is not of the essence of the offense, and the specific act charged is sufficiently identified by the other testimony, the variance between the allegation and the proof will not constitute a fatal defect, and need not induce a disapproval of the sentence where there has been a conviction. A return, however, of the record to the court for correction, if practicable, would well be resorted to by the reviewing officer before taking final action. (*Dig. J. A. Gen.*, 231, par. 20.)

*Matter of evidence in pleading.*—While it is in general irregular to plead matter of evidence, there is no objection to noting in brief in the specification the immediate result or effect of the act charged, as a circumstance of description illustrating the character and extent of the offense committed. Thus, while a homicide, if amounting to murder, and capital under section 5339, Revised Statutes, or by the law of the State, etc., can not as such be made the subject of a military charge in time of peace (see sixty-second article), yet a capital homicide, where it has been committed in connection with or as a consequence of a specific military offense charged against the accused, as, for example, "mutiny," or "offering violence to a superior officer," may properly be stated in the conclusion of the specification, as matter of aggravation and as indicating the animus of the accused or the amount of force employed. (*Ibid.*, 232, par. 21.)

*Joint charges.*—Properly to warrant the joining of several persons in the same charge and the bringing them to trial together thereon, the offense must be such as requires for its commission a combination of action and must have been committed by the accused in concert or in pursuance of a common intent. The mere fact of their committing the same offense together and at the same time, although material as going to show concert, does not necessarily establish it. Thus the fact that several soldiers have absented themselves together without leave will not, in the absence of evidence indicating a conspiracy or concert of action, justify their being arraigned together on a common charge, for they may merely have been availing themselves of the same convenient opportunity for leaving their station. (*Ibid.*, par. 22.)

Desertion, of which the gist is a certain personal intent, is not ordinarily chargeable as a joint offense. (b) Where two or more soldiers have deserted together as the result of a concerted plan, they may properly be jointly charged with "conspiracy to desert, to the prejudice of good order and military discipline" (or with desertion in the execution of a conspiracy—*G. O.* 21 of 1891), or each, in addition to being charged with desertion, may also be severally charged with engaging in such conspiracy. In the absence of such additional charge, the fact of concert may of course be put in evidence under the charge of desertion as illustrating the animus of the act committed. (*Ibid.*)

*By whom preferred.*—Military charges, though commonly originating with military persons, may be initiated by civilians; indeed, it is but performing a public duty for a civilian, who becomes cognizant of a serious offense committed by an officer or soldier, to bring it to the attention of the proper commander. So a charge may originate with an enlisted man. But, by the usage of the service, all military charges should be formally preferred by, i. e., authenticated by the signature of, a commissioned officer. Charges proceeding from a person outside the Army, and based upon testimony not in the possession or knowledge of the military authorities, should, in general, be required to be sustained by affidavits or other reliable evidence, as a condition to their being adopted. (*Ibid.*, 233, par. 23.)

Any officer may prefer charges; an officer is not disqualified from preferring charges by the fact that he is himself under charges or in arrest. Charges should be preferred to the authority empowered to convene the court for their trial. The signing of charges, like orders, with the name of an officer, adding—"by the order of" his commander, is unusual and objectionable. Charges, where not signed voluntarily by the officer by whom they are preferred, are, in practice, usually subscribed by the judge-advocate of the court. (*Ibid.*, par. 24.)

In cases where charges preferred against an officer are apparently susceptible of a reasonable explanation, it is not unusual, especially where the charges are

a In the military, as in the civil, practice, *double* pleading—i. e., specifications setting forth two (or more) distinct offenses (especially when chargeable under different articles of war) are properly condemned, and in sundry cases the conviction and sentence have been disapproved on account of the *duplicit*y in law of the pleadings. See *G. C. M. O.* 80, War Department, 1875; *G. O.* 3, 83, Department of the Missouri, 1863; id. 49, Department of the Ohio, 1864.

b See *G. O.* 78, War Department, 1872, issued by the Secretary of War in accordance with opinions, previously given, of the Judge-Advocate-General.

of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of

preferred by an inferior against a superior, to afford the officer charged an opportunity to make explanation before it be determined whether to bring him to trial. (*Ibid.*, 234, par. 25.)

It is a reprehensible practice to allow charges to lie long dormant before being preferred. Charges should not be delayed, but should be brought to trial as soon as practicable and while the evidence is fresh. A delay of five months remarked upon as prejudicial to the administration of justice and unfair to the accused. (*Ibid.*, 235, par. 30.)

Commanding officers are not required to bring every dereliction of duty before a court for trial, but will endeavor to prevent their recurrence by admonitions, withholding of privileges, and taking such steps as may be necessary to enforce their orders. (Par. 930, A. R., 1895.)

Noncommissioned officers above the rank of corporal will not, if they object thereto, be brought to trial before regimental, garrison, or summary courts-martial, without the authority of the officer competent to order their trial by general court-martial; nor will sergeants of the post noncommissioned staff or hospital stewards be reduced, but they may be dishonorably discharged whenever reduction is included in the limit of punishment. (Par. 931, *ibid.*)

Charges, though prepared in the office of the Judge-Advocate-General, are not to be signed by him. If not signed by the officer actually preferring them, they will properly be authenticated by the signature of the acting judge-advocate of the department, or, preferably, by the judge-advocate of the court. (*Dig. Opin. J. A. Gen.*, 235, par. 31.)

An objection that a charge is not signed should be taken at the arraignment, when the omission may be supplied by the judge-advocate's affixing his signature. By pleading the general issue the accused waives the objection. (*Ibid.*, par. 32.)

But, to be taken cognizance of by the court, it is not essential that a charge should be signed by any officer. If, though not so signed, it be duly officially transmitted by the convening commander, or other competent superior authority, to the court, either directly or through the judge-advocate "for trial," or "for the action of the court," or in terms to such effect, it is sufficiently authenticated for the purposes of trial, and trial upon it may be proceeded with by arraignment thereon of the accused. (*Ibid.*, par. 33.)

*Reference for trial.*—In general, charges can regularly and properly be ordered to be tried, or transmitted for trial to the court, only by the authority of the officer convening the court or that of his superior. An inferior to the convening officer can not properly refer charges to the court for trial except under some specific or general authority received from that officer. (a) The mere fact, however, that a court has proceeded to the trial of charges, referred to it without due authority by a commander inferior to the one who convened the court, can not affect the legality of the finding or sentence in the case. (*Ibid.*, 234, par. 26.)

*Withdrawal of charges.*—A withdrawal of charges constitutes no legal bar to their being subsequently revived and repreferred. Charges, however, once formally withdrawn will not in general properly be revived except upon new material evidence being obtained. Charges once accepted as a sufficient basis for action, by the commander competent to convene a court for their trial, can not properly be withdrawn except by his authority. (*Ibid.*, 234, par. 27.)

*Amendment of charges.*—How far charges may be amended by the judge-advocate before the organization of the court depends mainly upon his authority, general or special, to make amendments. After the arraignment, amendments of form may always be made, with the assent of the accused or by the direction of the court; and so may slight amendments of substance not so modifying the pleading as to make it a charge of a new and distinct offense. An amendment so substantial as materially to modify the "matter" before the court, will not in general be authorized (see eighty-fourth article), and any amendment whatever of substance should be allowed by the court with caution and subject to the right of the accused to apply for a continuance. (See ninety-third article.) (*Ibid.*, par. 28.)

The judge advocate is not unfrequently directed to prepare or reframe charges; but where charges, already formally preferred, are transmitted to him for prosecution, he should not assume to modify them in material particulars in the absence of authority from the convening officer. While he may ordinarily correct obvious mistakes of form or patent or slight errors in names, dates, amounts, etc., he can not without such authority make *substantial* amendments in the allegations, or—least of all—reject or withdraw a charge or specification, or enter a *nolle prosequi* as to the same, or substitute a new and distinct charge for one transmitted to him for trial by the proper superior. (b) (*Ibid.*, p. 458, par. 10.)

A list of the proposed witnesses is no part of the military charge, though such a list may properly be and is not unfrequently appended to a charge. In serving upon the accused a copy of the charges, it is not essential, though the better practice, to add a copy of the list of witnesses where one is appended to the original charges. Appending such a list does not preclude the prosecution from calling witnesses not named therein. (*Ibid.*, 235, p. 29.)

A middle name or initial is no part of a person's name in law, and, except where it is necessary to identify the individual, may be omitted from the charge without

<sup>a</sup> This rule, though not always insisted upon in practice, has been repeatedly enjoined in express terms by department commanders. See, for example, G. O. 67, Department of Arkansas, 1864; G. O. 83, Department of Dakota, 1869; G. O. 8, Department of Texas, 1874.

<sup>b</sup> See G. O. 64; Department of the Cumberland, 1867; *ibid.* 93, *ibid.*, 1868; *ibid.* 85, Department of the South, 1874; G. C. M. O. 36, 42, Department of the Platte, 1877; *ibid.* 13, *ibid.*, 1878; *ibid.* 48, Military Division of Pacific and Department of California, 1880.



said ten days.<sup>1</sup> If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease.<sup>2</sup> But officers released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.<sup>3</sup> *Seventy-first Article of War.*

Written statement of offense; refusal of provost-marshal to receive.  
67 Art. War.

**1296.** No provost marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner. *Sixty-seventh Article of War.*<sup>4</sup>

Report of prisoners.  
68 Art. War.

**1297.** Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and, if he fails to make such report, he shall be punished as a court-martial may direct. *Sixty-eighth Article of War.*

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affecting the validity of the finding or execution of the sentence. So a misnomer in a charge, consisting of an erroneous middle name or initial, may be disregarded in a charge unless the accused moves to strike out or interposes an objection, in the nature of a plea in abatement, when he must also state his true name. The charge may then be amended accordingly in court, without delaying the proceedings. (*Ibid.*, 236, par. 37.)

A material amendment of a charge should properly be made before the actual trial. Where a court-martial, after the trial was concluded, directed a specification to be amended so as to render it more definite as to time and place, and then caused the accused to be arraigned and to plead over again, *nunc pro tunc*, *held*, that its action was without sanction of law or precedent. (*Ibid.*, par. 38.)

A failure at the arraignment to take notice of a variance between the form of a specification to which the accused is called upon to plead and such specification as it appeared in the copy of the charges served at his arrest, is a waiver of the objection, and the same can not be taken advantage of at a subsequent stage of the proceedings. (*Ibid.*, 237, par. 39.)

*Statement of enlistments.*—The statement as to enlistments, discharges, etc., required by paragraph 927 Army Regulations, 1895, to be furnished with the original charge to the convening authority, is not intended to be accompanied by a declaration, on the part of the commanding officer of the accused as to his present character. The regulation does not call for the officer's opinion on the subject, or contemplate that the character of the accused will be taken into consideration at this time. (*Ibid.*, par. 40.)

<sup>1</sup> Though an officer in whose case the provisions of this article in regard to service of charges and trial have not been complied with is entitled to be released from arrest, he is not authorized to release himself therefrom. If he be not released in accordance with the article, he should apply for his discharge from arrest, through the proper channels, to the authority by whose order the arrest was imposed or other proper superior. (*Dig. J. A. Gen.*, p. 80, par. 1.)

The term "within ten days thereafter," *held* to mean after his arrest. (*Ibid.*, par. 2.)  
<sup>2</sup> *Held* a sufficient compliance with the requirement as to the service of charges, to have served a true copy of the existing charges and specifications, though the list of witnesses appended to the original charges was omitted, and though the charges themselves were not in sufficient legal form, and were intended to be amended and redrawn. (*Ibid.*, p. 81, par. 3.)

<sup>3</sup> The fact that cases of officers put in arrest "at remote military posts or stations" are excepted from the application of the article does not authorize an abuse of the power of arrest in these cases. And where in such a case an arrest, considering the facilities of communication with the department headquarters and other circumstances, was in fact unreasonably protracted without trial, *held* that the officer was entitled to be released from arrest upon a proper application submitted for the purpose. (*Ibid.*, par. 4.)

<sup>4</sup> See in this connection the English case of *Wolton v. Gavin* (16 Q. B., 70), cited in *Ives's Mil. Law*, p. 74.

1298. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct. *Sixty-ninth Article of War.*

Release of prisoner; permitting escape. Penalty. 69 Art. War.

### GENERAL COURTS-MARTIAL.

#### CONSTITUTION AND COMPOSITION.

1299. Any general officer commanding an army, a Territorial Division or a Department, or colonel commanding a separate Department may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command the court shall be appointed by the President; and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President, for his approval or orders in the case.<sup>1</sup> *Seventy-second Article of War. Act of July 5, 1884 (23 Stat. L., 121).*

Who may convene general courts-martial in time of peace. 72 Art. War.

<sup>1</sup>This article specifies by what military officers a general court-martial may be constituted. The President of the United States has the power to order such a court, as the constitutional Commander in Chief of the Army, irrespective of this article or other statute. (Dig. Opin. J. A. Gen. 81, par. 1.)

The President as Commander in Chief, has a right, *virtute officio*, to appoint a general court-martial. *Runkle v. U. S.*, 19 C. Cls. R., 396. A power to appoint courts-martial devolved, by statute, on any other officer is shared by the President, though he be not named therein. Since the earliest legislation of our Government it has been understood and intended that powers granted to general officers in regard to courts martial are thereby granted to the President. His name is to be understood as written in every statute which confers upon a military officer military authority. *Swain v. U. S.*, 28 C. Cls. R., 173.

The President is empowered to convene general courts-martial, not merely in the class of cases specified in the seventy-second article of war (viz, where a military officer, thereby authorized to convene such a court, is the "accuser or prosecutor" of an officer in his command whom it is desired to bring to trial), but, generally, and in any case, by virtue of his authority as Commander in Chief of the Army. As such he is authorized to give orders to his subordinates, and the convening of a court-martial is simply the giving of an order to certain officers to assemble as a court and exercise certain powers conferred upon them, when so assembled, by the Articles of War. This general power has been exercised in repeated instances by the President since the formation of the Government. Indeed, if the same could not be exercised, it would be impracticable, in the absence of an assignment of a general officer to command the Army, to administer military justice in a considerable class of cases of officers and soldiers not under the command of any department, etc., commander, as a large proportion of the officers of the general staff, for example. (a) (Dig. Opin. J. A. G., 605, par. 1.)

A convening of a general court-martial nominally by the Secretary of War is in law a convening by the President, and therefore as legal as if the President himself had signed the order. (Ibid., 606, par. 2.)

This article, in empowering certain commanders to constitute the superior courts-martial, makes them the judges in general of the expediency of ordering such courts in particular instances. Except where specially authorized to do so by law or regulation, an officer or soldier can not demand a court-martial in his own case. (Ibid., 81, par. 2.)

Where a commander empowered by this article to convene a general court-martial declines, in the exercise of his discretion, to approve charges submitted to him by an inferior and to order a court thereon, his decision should in general be regarded as final. (Ibid., par. 3.)

The authority to order a court under this article is an attribute of command. Thus a department commander, detached and absent from his command for any considerable period by reason of having received a leave of absence (whether of a formal or informal character), or having been placed upon a distinct and separate duty (as that

<sup>a</sup>The authority of the President as Commander in Chief to institute general courts-martial has been in fact exercised from time to time, from an early period, in a series of cases, commencing with those of Brigadier-General Hull, Major-General Wilkinson, and Major-General Gaines, tried in 1813-1816, and including that of Brevet Major-General Twiggs, tried in 1858. His authority in this particular has been in substance affirmed by the Judiciary Committee of the Senate, in Report No. 868, dated March 3, 1879, Forty-fifth Congress, third session. (A single member of the committee apparently dissented, in a subsequent report of April 7, 1879, Mis. Doc. No. 21, Forty-sixth Congress, first session.)

Who may convene in time of war.  
73 Art. War.  
Dec. 24, 1861 c.  
3, v. 12, p. 330.

1300. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.<sup>1</sup> *Seventy-third Article of War.*

of a member of a court or board convened outside his department, for example), is held to be incompetent during such absence to order a general court-martial as department commander, even though no other officer has been assigned or has succeeded to the command of the department. (*Ibid.*, 82, par. 5.)

Nor can a department commander, thus absent, exercise such authority through a staff officer or other subordinate, or delegate the same to a subordinate to be exercised by him. Nor, where a general court-martial duly convened by a department commander has, at a time when the commander is thus absent from his command, been reduced, by an incident of the service, below five members, can another member legally be detailed upon the court, by the assistant adjutant-general, or other subordinate officer remaining in charge of the headquarters; since such a detail would be an exercise of a portion of the authority vested by this article in the commander, and which can in no part be delegated. (*Ibid.*)

An assistant adjutant-general, or other staff officer of a department commander, is not empowered, of his own authority, in the absence of the commander, to relieve an officer duly detailed upon a court-martial by such commander, any more than he is so empowered to detail a new officer as a member of such a court. (*Ibid.*, 88, par. 7.) See also, in this connection, *MANUAL FOR COURTS-MARTIAL*, pp. 9-11.

#### CONVENING OFFICER AS ACCUSER OR PROSECUTOR.

To fix upon the commander who convened the court the character of "accuser or prosecutor" it is not essential that he should have signed the charges on which the accused was tried. (*Ibid.*, p. 82, par. 6.)

The mere fact that a general court-martial is convened by a department commander does not make such commander an "accuser or prosecutor" in the sense of this article. (a) A department commander is not an "accuser or prosecutor" when, upon information of misconduct duly laid before him, he orders the acting judge-advocate of the department, or the colonel commanding the regiment, to proceed to bring the offender to trial, this being a part of his due and regular supervision and command. (*Ibid.*, 84, par. 11.)

Where the commander who convened the court had also to do with the preparing or preferring of the charges, the question whether he is to be regarded as having been the "accuser or prosecutor" of the accused in the sense of this article is mainly to be determined by his animus in the matter. If, when the facts of the alleged offense are communicated to him, he determines that the same constitute a sufficient and proper ground for a trial, and thereupon directs a suitable officer, as an officer of his staff, or the commanding officer of the regiment or company of the accused, to prepare or prefer the charges, he acts simply in the due performance of an official duty and not as "accuser or prosecutor." (b) Nor is his action any the less official if, in the desire to have the proceedings regular and effectual, he himself directs as to the form of the charges, or, after the same are prepared, revises them so that they shall sufficiently set forth the alleged offenses. Much less is he to be deemed an "accuser or prosecutor" where he causes the charges to be preferred and proceeds to convene the court by the direction of the Secretary of War or a competent military superior.

On the other hand, where he himself initiates the charge, out of a hostile animus toward the accused or a personal interest adverse to him, or from a similar motive adopts and makes his own a charge initiated by another, he is to be deemed an "accuser or prosecutor" within the article. Nor is he the less so where, though he has no personal feeling or interest in the case, he has become possessed with the conviction that the accused is guilty and deserves punishment, and in this conviction initiates or assumes as his own the charge or the prosecution. For in this case equally as in the former he is unfit to be a judge upon the merits of the case; in the one instance he is too much prejudiced to be qualified to do justice; in the other he has condemned the accused beforehand. (*Ibid.*, 82, par. 7.) See also *ibid.*, 84, pars. 8, 9, and 10.

<sup>1</sup> On August 31, 1864, was issued from the War Department a general order, No. 251 of that year, which directed as follows: "Where a post or district command is composed of mixed troops, equivalent to a brigade, the commanding officer of the department or Army will designate it in orders as 'a separate brigade,' and a copy of such order will accompany the proceedings of any general court-martial convened by such brigade commander. Without such authority, commanders of posts and districts having no brigade organization will not convene general courts-martial." Under this order, which was applied mainly to the commands designated in the late war as "districts," it was held by the Judge-Advocate-General as follows: That the fact that a district command was composed not of regiments, but of detachments

<sup>a</sup> See 16 Opin. Att. Gen., 109.

<sup>b</sup> Compare late opinion, to a somewhat similar effect, of the Attorney-General of August 1, 1878 (16 Opins., 106), in which it is also held that where the record of the trial fails to indicate that the convening officer was the "accuser or prosecutor" of the accused, the latter in applying to the Secretary of War to have the proceedings pronounced invalid on this ground, may establish the facts by the production of affidavits setting forth the circumstances of the case and the action of the commander.

**1301.** General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.<sup>1</sup> *Seventy-fifth Article of War.*

Composition.  
75 Art. War.

**1302.** When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled. *Seventy-sixth Article of War.*

When requisite  
number is not  
present at a post.  
76 Art. War.

merely (which, however, in the number of troops, were equal to or exceeded two regiments), did not preclude its being designated as a "separate brigade," and that when so designated, its commander had the same authority to convene general courts-martial as he would have if the command had the regular statutory brigade organization. That though a district command embraced a force considerably greater than that of a brigade as commonly constituted, yet if not designated by the proper authority as a "separate brigade," its commander would be without authority to convene general courts-martial, unless, indeed, his command constituted a separate "army" in the sense of the sixty-fifth (now seventy-second) article. That it was not absolutely necessary, to give validity to the proceedings or sentence of a general court-martial convened by the commander of a separate brigade, that the command should be described as a separate brigade in the caption or superscription of the order convening the court and prefixed to the record, or even that a copy of the order designating the command as a separate brigade should accompany the proceedings. As to the latter feature, the order of 1864 is viewed as directory merely. And though not to accompany the record with a copy of the order thus constituting the command would be a serious irregularity, as would be also—though a less serious one—the omission of the proper formal description of the command from the convening order, yet if the command had actually been duly designated, and in fact was, a separate brigade, and this fact existed of record and could be verified from the official records of the department or army, the omission of either of these particulars, though a culpable and embarrassing neglect on the part of the court or judge-advocate, would not, per se, invalidate the proceedings or sentence. (Dig. Opin. J. A. G., 85, par. 3.)

*Held* (January, 1866) that until the status belli had been formally declared to be terminated by the President or Congress, such status must be held to be subsisting; and that, till such declaration, the authority vested by the act of December 24, 1861, chapter 3 (now article 73), in commanders of divisions and separate brigades might lawfully continue to be exercised. (*Ibid.*, 86, par. 4.)

This section is merely directory to the officer appointing the court, and his decision as to the number which can be convened without manifest injury to the service, being a matter submitted to his sound discretion, must be conclusive. *Martin v. Mott*, 12 Wheat., 19, 35; *Mullan v. U. S.*, 140 U. S., 240. The limitation with reference both to the numbers and rank of the members of a general court-martial is discretionary with the appointing power. *Mullan v. U. S.*, 23 C. Cls. R., 34. *Dynes v. Hoover*, 20 How., 81.

Under this article all officers of the active list of the Army are eligible to be detailed as members of general courts-martial. Chaplains, however, are not so detailed in practice. Retired officers, in view of sections 1259, 1260, Revised Statutes, can not legally be assigned to court-martial duty. (Dig. Opin. J. A. Gen., 87, par. 1.)

But only officers can be so detailed. Courts-martial composed in whole or in part of enlisted men are unknown to our law. So an "acting assistant surgeon," being a civilian, is not qualified to sit on a court-martial. Though any officer may legally be detailed, it is desirable that no officer should be selected who, from having preferred the charges or other known reason, may be presumed to be biased or interested in the case. (*Ibid.*, par. 2.)

It is not essential to the validity of the proceedings that the order convening a general court-martial of less than thirteen members should state that "no other officers" or "no greater number" "than those named can be assembled without manifest injury to the service." Attorney-General Wirt (1 Opins., 296) did not hold such a statement to be essential, but simply expressed the opinion that the President, before confirming a certain death sentence, adjudged by a court of less than thirteen members, would properly satisfy himself that a court of the full number could not have been convened without prejudice to the service. It was held at an early period by the United States Supreme Court that it was for the convening authority to determine as to what number of officers could be detailed without manifest injury to the service, and that his decision on the subject would be conclusive. (a) (*Ibid.*, 88, par. 8.)

Regular officers not to sit on courts to try officers or soldiers of other forces.

77 Art. War.

Officers of marines and of Regular Army may be associated on courts.

June 30, 1834, c. 132, s. 2, v. 4, p. 713.

78 Art. War.

**1303.** Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.<sup>1</sup> *Seventy-seventh Article of War.*

**1304.** Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed. *Seventy-eighth Article of War.*

#### JURISDICTION.

Officers triable by general courts-martial.

79 Art. War.

Retainers to camp.

63 Art. War.

**1305.** Officers shall be tried only by general courts-martial; and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.<sup>2</sup> *Seventy-ninth Article of War.*

**1306.** All retainers to the camp, and all persons serving with the armies of the United States in the field, though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war. *Sixty-third Article of War.*

<sup>1</sup> Although officers and soldiers of volunteers, not being militia, are as much a part of the Army of the United States as are regular officers, yet, in view of the terms of this article, an officer of the Regular Army, so called, would not be eligible for detail as a member of a court-martial convened for the trial of volunteer officers or soldiers, nor, when duly detailed as a member of a court-martial, would he be competent to take part in the trial of a volunteer by such court. (*Ibid.*, 89.)

The volunteer force during the late war was not a part of the militia, but of the Army of the United States. Though assimilated to the militia in some respects, as, for example, in the mode of original appointment of regimental and company officers, it was as distinct in law from the militia as was the so-called "regular" contingent of the Army. (a) Volunteer officers, once mustered into the service of the United States, and while they remained in that service, did not differ substantially from regular officers in their status, rights, or otherwise. Their tenure of office was indeed briefer; this, however, was not a material legal distinction, since the term of regular officers was also in some cases limited by statute to a definite period, as the duration of the existing war. (*Ibid.*, p. 745, par. 1.)

<sup>2</sup> Courts-martial (though, within their scope and province, authoritative and independent tribunals) are bodies of exceptional and restricted powers and jurisdiction; their cognizance being confined to the distinctive classes of offenses recognized by the military code. (b) Their jurisdiction is criminal, their functions being to assign (in proper cases) punishment; they have no authority to adjudge damages for personal injuries or private wrongs. (c) (*Dig. Opin. J. A. Gen.*, 321, par. 1.)

The court-martial having jurisdiction of the person of the accused and of the offense charged, and having acted within the scope of its lawful power, its decision and sentence can not be reviewed or set aside by the civil courts by writ of habeas corpus or otherwise. *Johnson v. Sayre*, 158 U. S., 109, 118; *Dynes v. Hoover*, 20 How., 65, 82; *Ex parte Reed*, 100 U. S., 13; *Ex parte Mason*, 105 U. S., 696; *Smith v. Whitney*, 116 U. S., 167, 177-179.

While it will in general be more for the interest and convenience of the service to bring an accused officer or soldier to trial near the locality of his offense, he may with equal legality be tried by a court convened in any other part of the United States. (*Ibid.*, 322, par. 2.)

The jurisdiction over persons in the military service covers all military offenses

a As illustrating the distinction made in section 8, Article I, of the Constitution, between the Army and militia, and indicating the status of the volunteers during the late war as a part of the former, see *Kerr v. Jones*, 19 Ind., 351; *Wantlan v. White*, *ibid.*, 471; In the matter of *Kimball*, 9 Law Rep., 503; *Burroughs v. Peyton*, 16 Gratt., 483, 485.

b *Ex parte Wilkins*, 3 Peters, 193; *Barrett v. Crane*, 16 Verm., 246; *Brooks v. Adams*, 11 Pick., 441; *Brooks v. Davis*, 17 *ibid.*, 148; *Brooks v. Daniels*, 22 *ibid.*, 498; *Washburn v. Phillip*, 2 Met., 296; *Smith v. Shaw*, 12 Johns., 257; *Mills v. Martin*, 19 *ibid.*, 7; In matter of *Wright*, 34 How. Pr., 221; *Duffield v. Smith*, 3 Sergt. & Rawle, 590; *Bell v. Tooley*, 12 Iredell, 605; *State v. Stevens*, 2 McCord, 32; *Miller v. Seare*, 2 W. Black., 1141; 6 Opin. Att. Gen., 425. "A court-martial is a court of limited and special jurisdiction. It is called into existence by force of express statute law, for a special purpose, and to perform a particular duty; and when the object of its creation is accomplished it ceases to exist." \* \* \* If, in its proceedings or sentence, it transcends the limit of its jurisdiction, the members of the court and the officer who executes its sentence are trespassers, and as such are answerable to the party injured, in damages, in the courts." 3 Greenl. Ev., sec. 470.

c See 2 Greenl. Ev., sec. 471, 476; *United States v. Clark*, 6 Otto, 40; *Warden v. Bailey*, 4 Taunt., 78.

**1307.** The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the articles of war, and shall be subject to be tried by courts-martial.<sup>1</sup> *Sixty-fourth Article of War.*

Militia while in  
service subject to  
Articles of War.  
64 Art. War.

committed by them, whether within or beyond the territorial jurisdiction of the United States. Military offenses are not territorial. (Manual for Courts-Martial, p. 12.)

The jurisdiction of courts-martial is non-territorial. In a case of an officer who exhibited himself in a drunken condition at a public ball in Mexico, *held* that his offense was cognizable by a court-martial of the United States, subsequently convened in Texas by the department commander. This for the reason that the military jurisdiction does not recognize territoriality as an essential element of military offenses, but extends to the same wherever committed, a principle which is again confirmed by the comprehensive provision of the Sixty-fourth Article of War. (*Ibid.*, par. 20.)

In order to become amenable to the military jurisdiction, an officer or soldier must have been legally and fully admitted into the military service of the United States. Thus *held* that an officer of State volunteers appointed by a governor of a State, but not yet mustered into the United States service, was not amenable to the jurisdiction of a court-martial of the United States for an offense committed while engaged in recruiting service under the authority of the governor. So *held* that the making of fraudulent representations in the course of the preliminaries to an enlistment—as in the “declaration of the recruit”—and before the enlistment was legally complete and the soldier thus fully in the United States service, did not constitute an offense within the cognizance of a court-martial. (*Dig. J. A. Gen.*, 323, par. 4.)

An officer or soldier (except as otherwise provided in the sixtieth article) ceases to be amenable to the military jurisdiction for offenses committed while in the military service, after he has been separated therefrom by resignation, dismissal, being dropped for desertion, muster out, discharge, etc., and has thus become a civilian. (*a*) The old English precedent of Sackville's case (*b*) (which appears, indeed, to stand alone even in England) has not been followed in this country or recognized in our laws. (*Ibid.*, par. 5.)

Whenever the law permits the civil courts of the United States to review the proceedings of courts-martial, such review must be confined to the question of jurisdiction alone. If the court-martial is found to have acted with jurisdiction, the civil court can not and will not go into the case further. *Wales v. Whitney*, 114 U. S., 564; *Dynes v. Hoover*, 20 How., 82.

The following classes of persons are, by statute, made subject to military law, and are therefore amenable to trial by general court-martial:

- (1) Members of the military establishment. Section 1094, Revised Statutes.
- (2) Persons admitted to the Soldiers' Home at Washington, D. C. Section 4824, Revised Statutes.
- (3) Inmates of the National Home for Disabled Volunteers. Section 4835, Revised Statutes.
- (4) Persons guilty of contempt of court. Eighty-sixth Article of War.
- (5) Posttraders (in time of war only). Section 3, act of July 26, 1876 (19 Stat. L. 100).
- (6) The Marine Corps, when serving with the Army. Section 1621, Revised Statutes.
- (7) The militia, when called into active service. Sections 1642-1644, Revised Statutes. Sixty-fourth Article of War.
- (8) Persons relieving or harboring the enemy. Forty-fifth Article of War.
- (9) Persons giving intelligence to the enemy. Forty-sixth Article of War.
- (10) Retainers to the camp, and all persons serving with armies in the field. Sixty-third Article of War.

(11) Spies. Section 1343, Revised Statutes. See, also, in connection with the subject of jurisdiction, *MANUAL FOR COURTS-MARTIAL*, pp. 11-14.

<sup>1</sup> A discharge of a soldier, when subject to trial and punishment for a military offense, is a formal waiver and abandonment by the United States of jurisdiction over him. Nor does a soldier, after having once been discharged, as where he has been dishonorably discharged by sentence, remain liable to the military jurisdiction for desertion or any other military offense committed before discharge, by reason of being still held in military custody as a prisoner in confinement under the same sentence; for he is then held not as a soldier, but as a civilian convict.

Nor can a person who, by reason of acceptance of resignation, dismissal, discharge, etc., has become wholly detached from the military service, be made liable to trial by court-martial, for offenses committed while in the service, on the ground that such offenses were not discovered till after he had left the Army.

The returning by a dismissed, etc., officer, to the service under a new commission does not revive a jurisdiction for offenses committed while he was in the service, which had lapsed upon his being separated from it.

It is to be understood that the general rule of the nonamenability to military trial of officers and soldiers, after discharge, dismissal, etc., is subject to a specific statutory exception, viz, that provided for in the concluding provision of the sixtieth article. (*Dig. Opin. J. A. Gen.*, 323, par. 5.)

Where a soldier in the Army of the United States was arrested for a crime, and his term of enlistment expired before his trial and conviction by court-martial, *held* that the jurisdiction of the court-martial having once attached by arrest, it

<sup>a</sup> See this principle repeated and illustrated in *G. C. M. O.* 4, 16, War Department, 1871; *G. O.* 90, Department of Pennsylvania, 1865; *G. O.* 43, Middle Department, 1865; *G. O.* 22, Department of the Missouri, 1866.

<sup>b</sup> Note the counter dictum of Lord Mansfield, in *Parker v. Clive*, 4 Burrow, 2419 (dated in 1779), that officers of the army, “after resigning their commissions, cease to be objects of military jurisdiction.”

Contempts of  
court.  
86 Art. War.

1308. The court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures,

retained jurisdiction for all the purposes of trial, judgment, and execution. (*Barrett v. Hopkins*, 7 Fed. Rep., 312.)

A soldier, however, provided he has not been in fact discharged, may be brought to trial by court-martial after the term of service for which he enlisted has expired, provided, before such expiration, proceedings with a view to trial have been duly commenced against him by arrest or service of formal charges. (a) By such arrest or service the military jurisdiction attaches, and, once attached, trial by court-martial, and punishment, upon conviction, may legally ensue, though the soldier's term of enlistment may in fact expire before the trial be entered upon. In the leading case on this point, of a seaman in the Navy (*In re Walker*, 3 American Jurist, 281) (b), the supreme court of Massachusetts held (January 25, 1830), as follows: "In this case the petitioner was arrested, or put in confinement, and charges were preferred against him to the Secretary of the Navy before the expiration of the time of his enlistment; and this was clearly a sufficient commencement of the prosecution to authorize a court-martial to proceed to trial and sentence, notwithstanding the time of service had expired before the court-martial had been convened." So held, in a case of a soldier of the Regular Army, arrested on the day before the expiration of his term of enlistment, with a view to a trial for a military offense by court-martial, that the jurisdiction of the court had duly attached, and that his trial might legally be proceeded with. And similarly held in repeated cases of soldiers and officers of regular and volunteer regiments.

And held that a soldier could not be made amenable to trial for an offense committed after the expiration of his enlistment, by the mere fact that at the time he was duly held in arrest awaiting trial for an offense committed before the expiration of his term; the jurisdiction which had attached for the purposes of the trial and punishment of this offense not being capable of being extended to include the case of an offense committed by the party under a distinct legal status. Of course, if, after the jurisdiction—by arrest or service of charges—has attached, the soldier is discharged from the service, such jurisdiction wholly ceases. (*Ibid.*, 324, par. 6.)

Where the amenability of a soldier for a military offense had been finally severed by his due discharge from the service, held that it did not revive upon his re-entering the service within the period of limitation. (*Ibid.*, 331, par. 18.)

By the sixth amendment of the Constitution, civilians are guaranteed the right of trial by jury "in all criminal prosecutions." Thus, in time of peace, a court-martial can not assume jurisdiction of an offense committed by a civilian without a violation of the Constitution. It is only under the exceptional circumstances of a time of war that civilians may, in certain situations, become amenable to trial by court-martial. (c)

A civilian brought to trial before a court-martial can not, by a plea of guilty or other form of legal assent, confer jurisdiction upon the court, where no jurisdiction exists in law. (d) (*Dig. Opin. J. A. Gen.*, 325, par. 7.)

Any statute by which any class of civilians is attempted to be made amenable to trial by court-martial for offenses committed while civilians and in time of peace is necessarily unconstitutional.

Section 1361, Revised Statutes, applies only to prisoners in confinement at the military prison at Leavenworth. So, in a case of a prisoner, who, while confined after discharge under sentence, at the prison at Alcatraz Island, was brought to trial by court-martial for an escape and sentenced, on conviction, to an additional term of imprisonment, held that the second trial—the prisoner being then a civilian—was wholly without legal authority and the sentence of no effect. (e) (*Ibid.*, 327, par. 9.)

So, where a prisoner confined at the Leavenworth prison, after a discharge from the service, was brought to trial by court-martial for an offense (desertion) committed not during his confinement, but more than a year and a half before he was received at the prison under his original sentence, held that section 1361, Revised Statutes, furnished no authority for such trial, and that the court was therefore without jurisdiction and the sentence void. (*Ibid.*, 328, par. 10.)

To give a court-martial jurisdiction of the person of an officer or soldier charged with a military offense, it is not necessary that he shall have been subjected to any particular form of arrest, or that he shall have been arrested at all, or even ordered to attend the court. Here, as before a civil tribunal, his voluntary appearance and submission for trial is all that is essential. (*Ibid.*, par. 11.)

It is no objection to the assuming by a court-martial of jurisdiction of a military offense committed by an officer or soldier that he may be amenable to trial, or may actually have been tried and convicted, by a criminal court of the State, etc., for a criminal offense involved in his act. Thus a soldier may be tried for a violation of article 21, in striking or doing other violence to a superior officer, after having been convicted by a civil tribunal for the criminal assault and battery. So an officer or soldier may be brought to trial under a charge of "conduct to the prejudice of good order and military discipline" for the military offense (if any) involved in a homi-

a See G. C. M. O. 16, War Department, 1871.

b And see Judge Story's charge to the jury in *U. S. v. Travers*, 2 Wheeler Cr. C., 509; In the matter of *Dew*, 25 L. R., 540; In re *Bird*, 2 Sawyer, 33.

c See, in support of this view, *Ex parte Milligan*, 4 Wallace, 121-123; *Jones v. Seward*, 40 Barb., 563; In matter of *Martin*, 45 *ibid.*, 145; *Smith v. Shaw*, 12 Johns., 257, 265; In matter of *Stacy*, 10 *ibid.*, 331; *Mills v. Martin*, 19 *ibid.*, 22; *Johnson v. Jones*, 44 *lls.*, 142, 155; *Griffin v. Wilcox*, 21 *Ind.*, 386; In re *Kemp*, 16 *Wis.*, 359; *Ex parte McRoberts*, 16 *Iowa*, 605; *Antrim's case*, 5 *Philad.*, 288; 3 *Opin. Att. Gen.*, 690; 13 *ibid.*, 63.

d Compare *People v. Campbell*, 4 *Parker*, 386; *Shoemaker v. Nesbit*, 2 *Rawle*, 201; *Moore v. Houston*, 3 *Sergt. & Rawle*, 190; *Duffield v. Smith*, *ibid.*, 599; also One hundred and third article.

e This view is approved, and the last sentence of the prisoner declared inoperative by the Secretary of War, in G. C. M. O. 4, War Department, 1871.



in its presence, or who disturbs its proceedings by any riot or disorder.<sup>1</sup> *Eighty-sixth Article of War.*

cide or a larceny, of which, as a civil offense, he has been acquitted or convicted by a criminal court. And the reverse is also law, viz, that the civil court may legally take cognizance of the criminal offense involved, without regard to the fact that the party has been subjected to a trial and conviction by court-martial for his breach of military law or discipline. In such instances the act committed is an offense against the two jurisdictions and may legally subject the offender to be tried and punished under both. (a) (Dig. Opin. J. A. G., 328, par. 12.)

In cases of double amenability, while, in view of the subordination of the military to the civil power, the civil jurisdiction is entitled to the preference, yet in general that jurisdiction which is first fully attached is ordinarily properly allowed to have the precedence in its exercise over the other. See *Ex parte McRoberts*, 16 Iowa, 606; 6 Opin. Att. Gen., 423; G. O. 25, Headquarters of Army, 1840.

It can not affect the authority of a court-martial to take cognizance of the military offense involved in an injury committed by a soldier against an officer that before the trial the latter has resigned or been otherwise separated from the Army. (*Ibid.*, 329, par. 13.)

Whether a soldier may legally be held amenable to trial by court-martial for an offense committed by him while on furlough will depend upon the nature of the offense and the circumstances of his situation. In general, indeed, where he is thus absent at his home or at such a distance from his station and from troops that his offenses will not directly prejudice military discipline, (b) he will not render himself amenable to the military jurisdiction unless, indeed, he commits a desertion. (*Ibid.*, par. 14.) See *MANUAL FOR COURTS-MARTIAL*, p. 16, par. 7.

The discharge of a soldier not taking effect till delivery, actual or constructive, held that a soldier who committed a military offense on the day on which he was to be dishonorably discharged under sentence but before the discharge was delivered to him (or to the officer in charge of the prison at which he was also to be confined under the same sentence) was amenable to the military jurisdiction for the trial and punishment of such offense as being still in the military service. (*Ibid.*, 330, par. 16.)

Held that when the volunteer army to which a soldier belonged was, at the end of the late war, disbanded, soldiers absent in desertion ceased to be subject to military jurisdiction and became civilians, but that their last military record was that of deserters, and that, as to them, the disbandment of the army did not operate as a discharge from the service. (*Ibid.*, par. 17.)

In March, 1870, the president of the "National Home for Disabled Volunteer Soldiers" (a civilian) convened at the Home a court-martial composed of eight inmates of the same (all civilians, but designated by their former rank in the volunteer service as "surgeon," "captain," "sergeant," and "private") for the trial on charges of desertion and other offenses of another (civilian) inmate. The court tried the accused, convicted him, and sentenced him to a term of imprisonment. The proceedings and sentence were approved by the convening authority, who thereupon applied to the Secretary of War for an order designating a military prison for the confinement of the party in execution of his sentence. Held (upon a reference of the case for opinion by the Secretary of War) that the proceedings were unprecedented, unauthorized ab initio, and void as a whole and in detail; that the provision in the act establishing the Home that the inmates should be "subject to the Rules and Articles of War in the same manner as if they were in the Army," even if it could be regarded as constitutional, conveyed no authority for such a court as that constituted and composed in this case; and that the sentence adjudged by the same could not legally be executed in the manner proposed or otherwise. (c) (*Ibid.*, par. 15.)

Where the amenability of a soldier for a military offense had been finally severed by his due discharge from the service, held that it did not revive upon his reentering the service within the period of limitation. (Dig. Opin. J. A. Gen., 331, par. 18.)

Held that an officer could not, by procuring himself to be, or consenting to being, placed under a conservator as a habitual drunkard, in the form prescribed by the local law, withdraw himself from the military jurisdiction; but that he remained amenable to trial and punishment for offenses committed prior to such proceeding and within the period of limitation. (*Ibid.*, par. 19.)

Held that an acquittal of a soldier on an indictment for larceny, by a civil court, was no bar to his trial by court-martial for the same act, charged under the sixty-second article of war. And so held, in a case of an acquittal by a civil court of an officer who had committed a homicide of another officer in the course of an altercation in the presence of enlisted men at a military post. (*Ibid.*, par. 21.)

<sup>1</sup>The power of a court-martial to punish, under this article, being confined practically to acts done in its immediate presence, such a court can have no authority to

a That an officer may be amenable to the civil and the military jurisdiction at the same time for the same act, see cases of Assistant Surgeon Steiner and Captain Howe (6 Opin. Att. Gen., 413, 506). In the former case it is held that the "conviction or acquittal of an officer by the civil authorities, of the offense against the general law, does not discharge him from responsibility for the military offense involved in the same facts." In the latter case it is observed: "An officer may be tried by court-martial for the military relation of an act after having been tried by the civil authorities for the civil relations of the same act." And see 3 Opins., 749, and compare *Moore v Illinois*, 14 Howard, 19-20. In a case published in G. C. M. O. 20, Headquarters of Army, 1869, an officer was charged with and convicted of "conduct to the prejudice of good order and military discipline" for the killing of a soldier, for which as "manslaughter" he had previously been acquitted by a civil court. And see cases in G. O. 78, Department of the East, 1869; G. C. M. O. 50, Department of the Missouri, 1871.

b Compare *Ex parte McRoberts*, 16 Iowa, 600.

c It is inaccurately stated in the report of the case of *Renner v. Bennett*, 21 Ohio St., 434 (December, 1871), that no inmate of the National Home had ever been subjected to a trial by court-martial. The instance referred to in the text, however, is the only one known of such a trial.



## JUDGE-ADVOCATES.

Judge-advocates.  
74 Art. War.

**1309.** Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.<sup>1</sup>  
*Seventy-fourth Article of War.*

punish, as for a contempt, a neglect by an officer or soldier to attend as a witness in compliance with a summons. (a) (Dig. Opin. J. A. Gen., 98, par. 1.)

A court-martial has none of the common-law power to punish for contempt vested in the ordinary courts of justice, but only such authority as is given it by this article. Thus *held* that a court-martial was not authorized to punish, as for a contempt, under this article (or otherwise), a civilian witness duly summoned and appearing before it, but, when put on the stand, declining (without disorder) to testify. (Ibid., 99, par. 2.)

The authority of a court-martial to punish as for a contempt being confined by the code (article 86) to cases of acts of menace or disorder committed in its presence, such a court would not be empowered to punish, as being in contempt, a witness appearing before it whose attendance it had been necessary to compel by process of attachment. (Ibid., 759, par. 33.)

Where a contempt within the description of this article has been committed, and the court deems it proper that the offender shall be punished, the proper course is to suspend the regular business, and after giving the party an opportunity to be heard, explain, etc., (b) to proceed—if the explanation is insufficient—to impose a punishment, resuming thereupon the original proceedings. The action taken is properly summary, a formal trial not being called for. Close confinement in quarters or in the guardhouse during the trial of the pending case, or forfeiture of a reasonable amount of pay, has been the more usual punishment. Instead of proceeding against a military person for a contempt in the mode contemplated by this article, the alternative course may be pursued of bringing him to trial before a new court on a charge for a disorder under article 62. (c) (Ibid., 99, par. 3.)

For other statutes conferring jurisdiction upon courts-martial to try and punish crimes and criminal offenses see the 3d, 5th, 6th, 7th, 8th, 9th, 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 30th, 31st, 32d, 33d, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52d, 53d, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62d, 68th, and 69th articles of war and section 1343 of the Revised Statutes.

<sup>1</sup> Any commissioned officer may legally be appointed judge-advocate of a court-martial. Thus a surgeon, assistant surgeon, or even a chaplain, is legally eligible to be so detailed. (Dig. Opin. J. A. Gen., 456, par. 2.) For authoritative instructions in reference to the performance of the duties of a judge-advocate of a court-martial. See MANUAL FOR COURTS-MARTIAL, pp. 22-25.

A separate judge-advocate should be appointed for each general court-martial convened by a department or other competent commander. The same officer may, indeed, be selected to perform the duties of judge-advocate as often as may be deemed desirable by the commander, but he should be detailed anew for every court-martial on which he acts. To appoint in a general order a particular officer to act as judge-advocate for all the courts to be held in the same command would be quite irregular and without the sanction of precedent. (Ibid., par. 3.)

It is competent for the commander who has convened a court-martial to relieve the judge-advocate originally detailed for it and substitute another in his place, and the second may in the same manner be relieved by a third, etc. The relieving, however, of a judge-advocate, pending a trial, must in general embarrass the prosecution of a case, and should not be resorted to if it can well be avoided. (Ibid., par. 4.)

While a civilian may legally be appointed, or rather employed, as judge-advocate of a court-martial, such an employment has, for the past fifty years, been of the rarest occurrence in the military service. (d) Civil judge-advocates have been much more frequently employed for naval than for military courts-martial. (e) (Ibid., 457, par. 7.)

An absence of the judge-advocate from the court during the trial does not *per se* affect the validity of the proceedings, but is, of course, to be avoided if possible. When the judge-advocate is obliged to temporarily absent himself, the court should in general suspend the proceedings for the time; or, if his absence is to be prolonged, should adjourn for a certain period. (Ibid., 460, par. 18.)

Should the judge-advocate be required to give evidence as a witness, the clerk or reporter of the court may go on to record his testimony while on the stand; or, if there be no clerk or reporter, he may record his own testimony as that of any other witness. (Ibid., par. 19.)

An officer can not in general fitly or becomingly act as judge-advocate in a case in

a As to the power of courts of inquiry to punish for contempt, see par. 1338, *infra*, note 1.

b See G. C. M. O. 37, Fourth Military District, 1868.

c Compare Samuel, 634; Simmons, sec. 434. The latter course has not unfrequently been adopted in our practice.

d The last occasions of such employment are believed to have been those of the trial of the persons charged with complicity in the assassination of President Lincoln, and the trial of Major Haddock, Provost-Marshal's Department (see G. C. M. O. 356 and 565, War Department, 1865), upon which Hon. J. A. Bingham and Hon. Roscoe Conkling were respectively employed as judge-advocates.

e In view of the provisions of section 17 of the act of June 22, 1870 (sec. 189, R. S.), transferring to the Department of Justice the authority to employ counsel for the Executive Departments, neither the Secretary of War nor the Secretary of the Navy is now authorized to retain a civilian lawyer to act as judge-advocate of a court-martial. 13 Opin. Att. Gen., 514; 14 *ibid.*, 15.

1310. That whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court.<sup>1</sup> *Sec. 2, act of July 27, 1892 (27 Stat. L., 278).*

Judge-advocate to withdraw from closed session.  
Sec. 2, July 27, 1892, v. 27, p. 278.

1311. Every judge-advocate of a court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of criminal jurisdiction within the State, Territory, or District where such military courts shall be ordered to sit, may lawfully issue.<sup>2</sup>

Witnesses compelled to attend.  
Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754; June 23, 1874, c. 458, s. 2, v. 18, p. 244.  
Sec. 1202, R. S.

which he is personally interested as accuser or prosecutor. Where the judge-advocate had prepared the charges and was the accuser in the case, and moreover entertained a strong personal prejudice or hostility against the accused, *held* that he was ill chosen to act as judge-advocate, especially in the capacities of prosecuting official and adviser to the court. A personal animus against the accused is particularly unbefitting a judge-advocate in a case where the accused is not represented by counsel. One who, without personal prejudice against the accused, or interest in his conviction, has signed the charges as company commander may not improperly act as judge-advocate in the case. (*Ibid.*, p. 462, par. 26.)

While a judge-advocate is not subject to challenge, and it can not affect the legal validity of the proceedings of a court-martial that the judge-advocate was personally objectionable or hostile to the accused, it is yet desirable to detail as judge-advocate, if practicable, an officer who has no considerable prejudice against the party to be tried, or any decided personal interest in his case. Thus the selection as judge-advocate of an officer who was not only a material witness for the prosecution, but was the next in the line of promotion and would be promoted in case the accused, an officer of his regiment of a higher grade, were dismissed by the court, remarked upon as an unfortunate one. (*a*) (*Ibid.*, par. 8.)

A competent judge-advocate will properly be left by the court to introduce the testimony in the form and order deemed by him to be the most advantageous, and generally to bring on cases for trial and conduct their prosecution according to his own judgment. (*b*) (*Ibid.*, 458, par. 11.)

The judge-advocate is entitled by usage to sum up the case and present an argument at the conclusion of the trial, even though the accused declines to make argument or statement. The court is not authorized to deny this right to be heard to the judge-advocate. (*Ibid.*, 462, par. 30.) In our practice he is entitled to the closing argument; he is not authorized to read to the court evidence or written statements not introduced upon the trial and which the accused has had no opportunity to controvert or comment upon. (*Ibid.*, 460, par. 21.)

A judge-advocate is not authorized to entertain charges in the first instance; he can properly act upon charges, i. e., make service of the same, prepare the case for trial, etc., only when the charges are transmitted to him for the purpose by the officer who has convened the court or detailed him as judge-advocate. (*Ibid.*, 457, par. 9.)

It is strictly the proper practice for a judge-advocate not to give his opinion upon a point of law arising upon a military trial, unless the same may be required by the court. This practice, however, is often departed from, and the opinions of judge-advocates, suitably tendered, are in general received and entertained by the court without objection, whether or not formally called for. But where the court *does* object to the giving of an opinion by the judge-advocate he is not authorized to attempt to give it, and of course not authorized to enter it upon the record. Whether the *fact* that the opinion was offered and objected to by the court shall be entered upon the record is a matter for the court alone to decide. It is, however, certainly the better practice that *all* the proceedings, even those that are *irregular*, which transpire in connection with the trial, should be set out in the record for the inspection of the reviewing authority. (*Ibid.*, 459, par. 15.)

The law (act of July 27, 1892, c. 272, s. 2) requiring the withdrawal of the judge-advocate whenever the court "sit in closed session," *held* not to apply to a meeting of the court, had after judgment, to hear read the record of the findings and sentence, such proceeding being no part of the trial. (*Ibid.*, 462, par. 29.)

## 2 PROCESS OF ATTACHMENT.

Section 1202, Revised Statutes, authorizes only judge-advocates of courts-martial to issue process to compel the attendance of witnesses. The court itself, general or inferior, has no such power. (*Dig. Opin. J. A. Gen.*, 463, par. 33.)

The judge-advocate is authorized only to initiate the process of attachment. The statute does not specify by whom it shall be executed, and the judge-advocate is not authorized to command any officer or person to serve it, nor has the court any such power. Paragraph 923, Army Regulations, 1895, makes provision on this point. (*Ibid.*, par. 34.)

A judge-advocate, having attached a civilian witness and had him brought to the place of the court, detained him one hour in the guardhouse before bringing him before the court. For this he was indicted for false imprisonment in a United

<sup>a</sup> See G. C. M. O. 5, War Department, 1871; G. C. M. O., 41, *ibid.*, 1875.

<sup>b</sup> Compare G. C. M. O. 97, Department of Dakota, 1878; *ibid.* 38, Department of Texas, 1878; and, as to the civil practice, *United States v. Burr*, 1 Burr's Trial, 85, 469; *Lynch v. Benton*, 3 Rob., 105; *Davany v. Koon*, 45 Miss., 71.

Reporter.  
Mar. 3, 1863, c  
75, s. 28, v. 12, p.  
736; June 23, 1874,  
c. 458, s. 2, v. 18, p.  
244.

Sec. 1203, R. S.

**1312.** The judge-advocate of a military court shall have power to appoint a reporter, who shall record the proceedings of, and testimony taken before, such court, and may set down the same, in the first instance, in short-hand.

States district court in Texas. *Held* that his action was warranted under section 1202, Revised Statutes, and *advised* that the Attorney-General be requested to cause the prosecution to be discontinued. (*Ibid.*, par. 35.)

The authority to issue process to compel civilian witnesses to appear and testify is vested, by section 1202, Revised Statutes, in "every judge-advocate of a court-martial." The present statute, however (unlike the original form), does not extend the authority to recorders of courts of inquiry. Further, the authority, being vested exclusively and independently in the judge-advocate, can not be exercised by the court. The attachment is thus not a writ or process of the court, but simply a compulsory instrumentality placed at the disposition of the judge-advocate as the prosecuting official representing the United States. (*Ibid.* 757, par. 27.)

To authorize a resort to an attachment, there must have been a formal summons, duly issued and served upon the witness, and not complied with. (*Ibid.*, par. 28.)

*Held* that the statute could not properly be construed as authorizing the issue of an attachment to compel a witness to attend before a commissioner or other person and give his deposition. (*Ibid.*, par. 29.)

A judge-advocate can not properly direct an attachment to a United States marshal or deputy marshal or other civil official. Some military officer or person should be designated by him, or detailed for the purpose by superior authority. (a) In executing the attachment, the needful force may be employed, but no more. See Dig. J. A. Gen., p. 463, par. 32, and p. 757, par. 31. See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 32-35 and 140, and par. 923, A. R., 1895.

#### ATTENDANCE OF WITNESSES.

The attendance of witnesses is obtained as to military persons by military orders issued by competent authority; as to civilians, by the issue of a writ of subpoena. (For forms of this writ see *Manual for Courts Martial*, pp. 138, 139.) The latter form of process, being inapplicable to the case, is never issued to a military person. The duty of the judge-advocate in this respect is described in the following paragraph of the Army Regulations:

"The judge-advocate will summon the necessary witnesses for the trial, but will not summon witnesses at the expense of the Government without the order of the court, unless satisfied that their testimony is material and necessary" (Par. 922, A. R., 1895.)

A judge-advocate is authorized to subpoena witnesses only for testifying in court; he can not summon a witness to appear before himself for preliminary examination. For this purpose he must procure an order to be issued by the proper commander. (Dig. J. A. Gen., p. 462, par. 31.)

A judge-advocate has no authority to employ a civil official or private civilian to serve subpoenas, if by so doing the United States will be subjected to a claim for compensation. (*Ibid.*, p. 463, par. 32.)

Except where their testimony will be merely cumulative, and will clearly add nothing whatever to the strength of the defense (see ninety-third article), the accused is in general entitled to have any and all material witnesses summoned to testify in his behalf. (b) A prompt obedience to a summons is incumbent upon all witnesses, nor is a commanding or superior officer in general authorized to place any obstacles in the way of the prompt attendance, as a witness, of an inferior duly summoned or ordered to attend as such. (c) Where the judge-advocate has declined to summon a witness for the accused, for the reason that he is not "satisfied" (in the words of paragraph 922 of the Army Regulations of 1895) that his testimony is "material and necessary to the ends of justice," the court may, in its discretion, direct him to be summoned. The court, however, will not in general properly sanction the summon.

a Upon the subject of the execution of process of attachment in military cases, see the opinion of the Attorney General in 12 Opins., 501; also the directions, based upon the same, of G. O. 93, H. Q. A., 1868.

Prior to the adoption of the Constitution, Congress (then the Government) appears to have relied upon the State authorities for the necessary process to compel the attendance of witnesses before military courts. (See resolution of November 16, 1779; III Journals of Congress, 392.) In the British law, by a provision first incorporated in the mutiny act in the year 1800, witnesses neglecting to comply with a summons requiring their presence at such courts, are made "liable to be attached in the court of Queen's Bench," etc. This provision well illustrates the close connection between the executive and the other governmental powers in the British constitution, where the sovereign is a part of the judiciary as well as of the legislature. The fact of the express distinction and separation of the three powers in our own organic law, one result of which has been to leave courts-martial, as agencies of the executive power, quite independent of any review or control on the part of the United States courts, has also no doubt availed to preclude the devolving upon the Federal tribunals of a power, fitly conferred in the foreign statute, but which, with us, would be exceptional and out of harmony with our constitutional system.

It may be added, in regard to the exercise of the authority to issue compulsory process, as vested in judge-advocates by the act of 1863 (sec. 1202, R. S.), that the occasions of such exercise have not been frequent in practice, and no case is known in which such authority has been abused.

b See G. C. M. O. 21, 24, War Department, 1872; G. C. M. O. 128, Headquarters of Army. 1876.

c See G. C. M. O. 18, Department of the Platte, 1877.

The reporter shall, before entering upon his duty, be sworn, or affirmed, faithfully to perform the same.<sup>1</sup> •

ing of a witness where it is not probable that his attendance can be secured within a reasonable time and his deposition legally be taken pursuant to the ninety-first article of war. (*Ibid.*, 751, par. 9.)

In military law an accused party can not be deemed to be entitled to have a witness summoned from a distance whose military or administrative duties are of such a character that they can not be left without serious prejudice to the public interests. Article 6 of the amendments to the Constitution, declaring that the accused shall be entitled "to be confronted with the witnesses against him," applies only to cases before the United States courts. Thus where the offense charged is not capital, and a deposition may therefore legally be taken under the ninety-first article of war, the Secretary of War will not in general authorize the personal attendance at the place of trial of a witness whose office or duty makes it necessary or most important that he should remain elsewhere. (*Ibid.*, 752, par. 10.)

An accused party at a military trial can rarely be entitled to demand the attendance, as a witness, of a chief of a staff corps, much less that of the President or Secretary of War, especially as some minor official can almost invariably furnish the desired facts. If, however, the testimony of one of these officials be found to be necessary or most desirable, and the same can not legally be taken by deposition, the court, if convened at a distance, may properly be adjourned to Washington or other convenient point, in order that the witness may be enabled to attend without detriment to the public interests. (*Ibid.*, par. 11.)

*Service of summons.*—A summons may legally be served either by a military or a civil person, (a) but will in general preferably be served by an officer or noncommissioned officer of the Army. A judge-advocate, or a commanding or other officer to whom a summons is sent for service, will not be authorized, by employing for the purpose a United States marshal or deputy marshal, or other civil official, to commit the United States to the payment of fees to such official. The action, however, of a judge-advocate in employing a deputy marshal to serve a summons, where apparently the service could not otherwise be so effectually or economically made, has in a few cases been so far ratified by the Secretary of War as to allow, out of the appropriation for Army contingencies, the payment of a small and reasonable account of charges rendered by such official. (*Ibid.*, 753, par. 13.)

There is no fee or compensation established or authorized to be paid, by statute or regulation, for the service of subpoenas for the attendance of witnesses before civil courts. Neither a commanding officer nor a judge-advocate is authorized to employ a civil official or any civilian for such service or to commit the United States to the payment of any compensation to such a person. But in a case where the employment of a civilian for such purpose had been resorted to, and it clearly appeared that to employ him was the most economical as well as effectual course open to the officer, *advised* that his reasonable compensation be paid out of the appropriation for contingencies of the Army. (*Ibid.*, 760, par. 39.) See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 32-35.

#### <sup>1</sup>EMPLOYMENT OF REPORTERS.

The only authority for the employment of reporters for courts-martial is that contained in section 1203, Revised Statutes, which authorizes the judge-advocate of a military court to appoint a reporter for such court. In view of this statute, *held* that the appointment, by a judge-advocate on the staff of a department commander, of a person to act as reporter for all the courts to be convened in the department, was in contravention of law and of no effect. (*Ibid.*, 461, par. 23.)

The employment of a stenographic reporter, under section 1203, Revised Statutes, is authorized for general courts only, and in cases where the convening authority considers it necessary. The convening authority may also, when necessary, authorize the detail of an enlisted man to assist the judge-advocate of a general court in preparing the record. (Par. 958, A. R., 1895.)

When a reporter is employed under section 1203, Revised Statutes, he will be paid not to exceed \$10 a day during the whole period of absence from his residence, traveling or on duty, which shall be in full for taking and transcribing all notes, making such number of copies to be made at one writing as the judge-advocate may require, and, unless otherwise specially ordered by the Secretary of War, in full for all services rendered and expenses incurred by the reporter. In special cases, when authorized by the Secretary of War, stenographic reporters may be employed at rates not exceeding 25 cents per folio (100 words) for taking and transcribing the notes in shorthand, or 10 cents per folio for other notes, exhibits, and appendices. Reporters will be paid by the Pay Department on the certificate of the judge-advocate. (Par. 959, *ibid.*)

No person in the military or civil service of the Government can lawfully receive extra compensation for clerical duties performed for a military court. (Par. 960, *ibid.*) See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 25-26.

#### INTERPRETERS.

Interpreters to courts-martial are paid by the Pay Department upon the certificate of the judge-advocate that they were employed by order of the court. They will be allowed the pay and allowances of civilian witnesses. (Par. 961, A. R., 1895.)

A form of oath for the interpreter to a court-martial will be found at page 29, par. 5, of the *Manual for Courts-Martial*.

#### MISCELLANEOUS PROVISIONS.

A judge-advocate of a court-martial may be detailed to perform other duty, as that of officer of the day or member of a board of survey, if such duty will not interfere

<sup>a</sup> See G. O. 93, Headquarters of Army, 1868.

## RECORD OF PROCEEDINGS.

Record, disposition of.

July 17, 1862, c. 201, ss. 5, 6, v. 12, p. 598; July 28, 1866, c. 299, s. 12, v. 14, p. 334; Mar. 3, 1877, c. 102, v. 19, p. 310.

## 113 Art. War.

1313. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings<sup>1</sup> and sentence of such

with his duties as judge-advocate. But in general of course no duties, in addition to those incidental to his function as judge-advocate, should be imposed upon him pending an important trial. (*Ibid.*, 460, par. 20.)

The general presumption of law, made in favor of all public officers, in the absence of affirmative evidence to the contrary, that they duly fulfill their functions, applies to the judge-advocate. (*Ibid.*, 462, par. 27.)

<sup>1</sup>Though courts-martial are not, in the legal sense, courts of record, (a) yet it is clearly contemplated by the statute law (see the one hundred and thirteenth and one hundred and fourteenth articles of war, taken from the old nineteenth article; also the later provision incorporated in section 1199, Revised Statutes, that a court-martial shall make a formal record of its proceedings, and the Army Regulations of 1895, in paragraphs 954-957, etc., direct as to the substance and form of the record in certain particulars. Upon such basis, the record of a court-martial has come to be, in our practice, a full report and recital of the details of the trial in each case, including (and herein it differs from a judicial record in the civil procedure) all the testimony introduced. As to the character, effect, and proper contents of a record of a military court (the same rules being held to apply in the main to records of inferior as to those of general courts), the Judge-Advocate-General has held as follows:

(1) That (in view of the requirement of paragraph 954, Army Regulations of 1895, that "every court-martial will keep a complete and accurate record of its proceedings") the entire proceedings and action of the court upon the trial should be fully set forth, including the organization, challenges to members (if any), arraignment, pleas, testimony of witnesses and documentary evidence, motions and objections, with the substance of the arguments, if any, thereon, rulings of the court on interlocutory questions, adjournments, continuances, closing addresses or statements, findings, and sentence—in short, every part and feature of the proceedings, material to a complete history of the trial and to a correct understanding by the reviewing officer both of the merits of the case and of the questions of law arising in the course of the investigation. (b) Where a sentence is pronounced, the record should contain everything necessary to sustain it in fact and in law.

(2) That the record of each case tried by a court-martial, where several cases are tried thereby, should be "complete in itself" (par. 954, A. R.), and as much an entirety, both in form and in substance, as if it were the only case tried. Each record should be separate and distinct from every other record, containing all that is essential to an original and independent official paper, and so perfected as to leave no material detail to be supplied from any previous or other record. The proceedings in each case should be made up separately; records, therefore, should not be attached together, but should be prepared and transmitted as disconnected documents.

(3) That the copy of the convening order, directed, by paragraph 954, Army Regulations, to be "set out" in each case, should properly be prefixed to the proceedings, as constituting the initial authority for the existence and action of the court. This order should of course be complete, and should exhibit, by its heading and its subscription, that it has proceeded from a commanding officer competent to order the court. Where several cases are tried by the same court, a separate copy of the order should accompany the record in each case; only to prefix a single copy to the first of a series of records attached together is irregular and in violation of the regulation as well as the general rule that every record should be "complete in itself." Where subsequent orders have been issued, adding or relieving members or a judge-advocate, or otherwise modifying the original convening order, copies of these should follow the original or be elsewhere incorporated in the record. In their absence it may not be possible to determine on the face of the record whether the officers who composed the court on the trial were actually or legally detailed therefor, or whether the prosecuting judge-advocate, or the judge-advocate who authenticates the proceedings, was so detailed. In connection, however, with any order making a change in the original detail of members or substituting a new judge-advocate, the record should note the fact of the new member taking his seat, or new judge-advocate commencing to officiate, according to the order, on a certain day. Where less than thirteen members are detailed in the original order, it has been usual to add therein a statement to the effect that "no other officers than those named can be assembled without manifest injury to the service." Such addition, however, is not required by article 75, and is not essential.

(4) That the record should show that the court met and organized pursuant to the order or orders constituting it. It is necessary, *first*, to the due organization of a general court-martial that there should assemble, at the time and place indicated in the order, at least a quorum, i. e., five, of the officers detailed as members. And the record should show that at least five members were present and acting, not only at the original assembling and proceeding to business as well as at the formal organization after the right of challenge has been fully exercised, but also at every day's session throughout the trial to the end. The record of the first assembling should, preferably, specify the members present by name, rank, etc. The statement that "*all the members*" were present, while strictly sufficient, is not a form to be favored. A statement to the effect that the *same members* were present as at a

<sup>a</sup> See *Chambers v. Jennings*, 7 Modern, 125; *Ex parte Watkins*, 3 Peters, 209; *Wilson v. John*, 2 Binney, 215.

<sup>b</sup> Compare *Coffin v. Wilbour*, 7 Pick. (Mass.), 151.

court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved. *One hundred and thirteenth Article of War.*

previous trial by the same court is improper, as being in contravention of the rule that the record of each case should be an entirety and not made up as to any particular by a reference to a record of a previous case. As to the statement of the assembling of the court on the days subsequent to the day of the organization, it is sufficient to note that all the members were present or that the same were present as on the day before or as at the last preceding session. The record should also show the presence of the accused at the time of the organization of the court for his trial, as also at all the material stages and portions of the proceedings. (a) (See Circ. No. 5 (H. Q. A.), 1891.)

(b) That the record should show that the order or orders convening the court and detailing the members were read to the accused or communicated to him, and that he was afforded an opportunity of objecting to any member—that is to say, that the privilege of challenge, accorded and defined by the eighty-eighth article of war, was extended to him. This testing of the members is the second essential to the due organization of the court, and though the phraseology of the question put to the accused, or of his answer thereto, need not be given in the record, it should clearly appear either that he had (or made) no objection, or, if he made any, what it was. Where a specific challenge is offered, it should, preferably, be recorded in the terms in which it is expressed by the accused; and, in connection with each challenge, the record should set forth the remarks of the member, if any, and the action of the court, as also, if an issue be joined on the challenge, the evidence, if any, introduced, and the substance of the argument had. Where a member is added to the court at a subsequent stage of the proceedings, the records should similarly show that the accused was afforded an opportunity of objecting to him, and set forth the action taken if objection was made. It may be added that while, with the convening order, any subsequent orders by which the original detail may have been modified should be read to the accused, the fact that other orders relating to the court, but not to its personnel, such as an order changing the place of meeting or an order authorizing the court to sit without regard to hours, may not have been so read, will not constitute an irregularity. It is usual, however, and proper, to read all such orders, equally with those relating to the composition of the court, in the presence of the accused.

(c) That the record should show, as the final essential to the due organization of the court, that the members and the judge-advocate were qualified by being duly sworn, and this should be shown in the record of every case tried by the same court, since the court and judge-advocate must be sworn independently and anew for each trial. (b) The approved form for recording this proceeding is: "The members of the court and the judge-advocate were then duly sworn." (c) Any statement, however, will be legally sufficient from which it can be gathered by the reviewing officer, or presumed, that the members and judge-advocate were in fact qualified as required by articles 84 and 85. Where an absent member joins or a new member is added to the court, or the first judge-advocate is relieved and a new judge-advocate is detailed, at a stage of the proceedings subsequent to the original organization and qualifying, the record should show that such member or judge-advocate, before acting, was sworn as above indicated.

(7) That the record should further set forth the arraignment of the accused on the charges and specifications, with the plea or pleas made. The charges and specifications should properly be embodied in the record instead of being referred to as annexed. If special pleas are interposed, the issue joined and action taken upon the same should be clearly stated.

(8) That the record should fully set forth all the testimony introduced upon the trial—the oral portion as nearly as practicable in the precise words of the witness. For a judge-advocate to assume to record only such testimony as he considered material, or to summarize the testimony given, has been remarked upon as a gross irregularity. It is usual and proper (though not essential) to specify by which party the witness is introduced and by whom the questions are put. It is also usual to designate the point at which the prosecution is closed and the testimony for the defense is commenced. It should appear that each witness (whether or not his evidence was important) was duly sworn, but it is not customary to add that he was sworn in the presence of the accused. Objections taken to the admissibility of testimony should be set forth, with the substance of the argument had thereon, if any, and the ruling of the court, and where the court is cleared on any interlocutory objection, the fact will properly be noted. (That the record, in view of the enactment of July 27, 1892, should now, where the court is closed, state that the judge-advocate withdrew, see paragraph 1310, ante.)

(9) That the record should state the finding on each of the several charges and specifications, and the sentence in the event of a conviction. In a case of a death sentence, it is usual (though not essential, not being required by the ninety-sixth article) to state that it was concurred in by two-thirds of the members. Care should be taken that there be no variance, in the statement of the name, etc., of the accused, between the finding or sentence and the charges. As directed by paragraph 954, Army Regulations of 1895, the record should be "authenticated" by the

a Compare Long v. State, 52 Miss., 23.

b Compare Coffin v. Wilbour, 7 Pick., 150. "It is not considered a compliance with" paragraph 829, Army Regulations, directing that "the court is to be sworn at the commencement of each trial," "to call several prisoners into court at the same time and swear the members of the court once before them all." G. O. 60, War Department, 1873.

c The inversion of the proper order of swearing the court and judge-advocate was held by the Attorney-General (13 Opins., 374) not to have invalidated the proceedings of a naval court-martial.

signatures of the president and judge-advocate. Where, indeed, there are no material proceedings after the sentence, the subscription of the same by these officers will constitute a sufficient authentication of the record as a whole. Where the president or judge-advocate has been changed pending the trial, it is, of course, the last one who is to sign the record. Adjournments from day to day are not required to be authenticated.

(10) That the record should exhibit, at the end of the proceedings of the court, the action thereon—approval or disapproval, etc.—of the reviewing authority. This, though it has sometimes been indorsed on the outside of the record, is preferably and customarily written and signed within the record, on a page following the authenticated judgment or other final proceeding of the court. Where several cases are tried by the same court, the action of the reviewing officer should be entered in the record of each trial. Merely to indorse it upon the last of a series of cases would be irregular as not a compliance with the regulation. So it is irregular for the reviewing officer, in lieu of writing and subscribing his action in the record, to annex to it or file with it a copy of a general order promulgating the proceedings and his action thereon. Where the proceedings are to be forwarded to higher authority for final action on the sentence, a mere reference, as by the words, "respectfully referred, or forwarded, to the President" (or other superior) "for action," etc., is incomplete and irregular. In such a case the original reviewing officer should state his approval, etc., in full and formal terms.

(11) That, where the court is reassembled for the purpose of a *revision* of its proceedings in any particular, the record should formally recite all that is ordered and done as a new and independent chapter of the history of the case tried. The record of a revision will properly begin with setting forth a copy of the order reconvening the court, and will show that at least five members assembled, together with the judge-advocate, and, where the correction required is such as to make it proper that he be present, the accused. The record will further show the action taken by the court, in making the correction or otherwise, under the order, and the proceeding will be finally authenticated by the signatures of the president and judge-advocate. Where the court decides upon making the correction, the same should be *declared to be made* in manner and form as determined upon, and with the proper reference to the part of the original proceedings in which the error occurs. The error itself, however, is to be left as originally recorded, all corrections in the body of the record by erasure, interlineation, etc., being irregular and improper. A court-martial is not authorized, either at a revision or during the trial, to *expunge* bodily any material words or statement forming a part of its record. (Dig. Opin. J. A. Gen., 639-646.)

Among the minor points held by the Judge-Advocate-General, in connection with the subject of the form of the record, are the following: That the several stages of the proceedings of the court should appear in the record in the proper order; thus, that the swearing of the court should not be recorded before the statement as to whether the accused objected to any of the members, etc. That, in its statement of the opening of each day's session, the record may well mention, if such was the fact, that the proceedings of the previous day or session (if any were had in the same case) were read and approved. Such a reading, however, though desirable as giving the court an opportunity to make corrections, is often not resorted to, and even where it is, is not always noted in the record. That, except where the court is specifically authorized to sit "without regard to hours," the record—though this is not essential, the ninety-fourth article of war not requiring it—may well set forth the hours of assembling and adjourning, so that it may appear that its sessions did not commence earlier than 8 o'clock a. m. or continue later than 3 o'clock p. m. That, though paragraph 1038, Army Regulations of 1889, in directing that "the record shall be clearly and legibly written," and "as far as practicable without erasures or interlineations," contemplates that the record will be written by hand, there is no legal objection to printing the record, or any part of it (such as the charges and specifications where numerous), provided, of course, the signatures of the President and judge-advocate are written by them in person. That the record will conveniently and properly be indorsed on the outside, or cover, so that the name of the accused and the court by which he was tried, with the time and place of trial, etc., will be apparent without opening and examining the proceedings. (a) (*Ibid.*, 646, par. 2.)

Unless it clearly appears to the contrary on the face of the record, it is in general to be presumed therefrom not only that the court had jurisdiction in the case, but also that the proceedings were sufficiently regular to be valid in law. (b) (*Ibid.*, 647, par. 3.)

#### ADJOURNMENT.

The adjournment from day to day of a military court is not required, by law or regulation, to be authenticated by the signatures of the president and judge-advocate. (*Ibid.*, 145, par. 1.)

While the practice of noting the adjournment of the court at the end of the record of a trial is a usual and proper one, and is often of service in indicating the

<sup>a</sup> For form of briefing record, see *MANUAL FOR COURTS-MARTIAL*, p. 129.

<sup>b</sup> However desirable it may have been, in view of the numerous and serious defects frequently occurring in the records of courts-martial during the late war, and in order to induce a greater precision and uniformity in the preparation of such records, to treat (as was not unfrequently done) the more grave of these defects as fatal to the validity of the proceedings or sentence, it is conceived that the same, in general, might properly have been regarded, and may now be regarded, as only calling for or justifying a disapproval of the proceedings. It is the effect of the rulings of the civil courts that where the court on any trial was legally constituted, had jurisdiction of the case, and has imposed a legal sentence or judgment, every reasonable intendment will be made in favor of the regularity of its proceedings, and even where the same are clearly irregular the validity of the result will not be deemed to be affected, provided no statutory provision has been violated. (See *Hutton v. Blaine*, 2 Sergt. & Rawle, 75, 79; *Moore v. Houston*, 3 *ibid.*, 197; *Trinity Church v. Higgins*, 4 Robt., 1; *Edwards v. State*, 47 Miss., 581.) And it is further



sequence of the cases tried and the course and order of the business transacted, a statement of such adjournment is not an essential part of the record of proceedings, and its omission will not affect their validity. (Ibid., par. 2.)

Where the order convening a military court is in the more usual form, requiring it, generally, to try such cases as may be brought before it, an adjournment at some period of its sessions without a day fixed for its reassembling will not preclude its meeting again and continuing its sessions till its business is terminated. (Ibid., par. 3.)

An adjournment "sine die" of a court-martial is quite without legal significance, having no more legal effect than a simple adjournment. Such an adjournment does not dissolve the court, since a military court has no power to terminate its own existence or divest its authority. (Ibid., par. 4.)

A court-martial has no power to terminate its own existence or function. Where therefore it has adjourned "sine die," it may, without being formally reconvened in orders, reassemble and take up and try a case referred to it by the convening authority, through its president or judge-advocate, precisely as if it had not adjourned at all. It is its duty indeed to hold itself in readiness to try all cases so referred, until formally dissolved by the convening officer or his successor in the command. (Ibid., 317, par. 13.)

A court-martial is not legally dissolved till officially informed of an order, from competent authority, dissolving it. The proceedings of a court-martial, had after the date of an order dissolving it, but before the court has become officially advised of such order, will thus be quite regular and valid. Where an order dissolving forthwith a court-martial has been duly officially received by the court and has thus taken effect, an order subsequently received revoking this order will be entirely futile. It will not revive the court, but the same, to be qualified for further action, must be formally reconvened as a new and distinct tribunal. (Ibid., par. 14.)

An adjournment "sine die" by a court-martial does not dissolve it, and the reviewing authority is authorized to send back to the court its record for the reconsideration of the judgment, and the court itself to reconsider and reframe the sentence, subsequently to such an adjournment and without regard to it. (Ibid., 320, par. 30.)

A court-martial in session at a military post or station is authorized to adjourn to the quarters, at the same post or station, of a sick witness and there take his testimony, if he is in fact, as certified by the medical officer, too ill to come to the court room. (a) (Ibid., 146, par. 5.)

#### MISCELLANEOUS PROVISIONS.

Where the proceedings of a court-martial have regularly terminated, and the sentence has been confirmed and ordered to be executed by the proper and final reviewing authority, the fact that the record has since been lost does not impair or affect the judgment of the court, and constitutes no legal obstacle to the enforcement of the penalty. But where the record of the trial of a soldier who had pleaded not guilty, and in whose case considerable evidence had been introduced, was, by a casualty of war, lost before any action had been taken upon the sentence by the reviewing officer, *held* that, unless the court could be reconvened and a new record could be made out from extant original notes, the proceedings, inasmuch as they could not be intelligently reviewed or formally approved, should properly be considered as inoperative and the sentence of no effect. (Dig. Opin. J. A. Gen., 648, par. 4.)

The legal record of a court-martial is that record which is finally approved and adopted by the court as a body, and authenticated by its president and judge-advocate. The court as a whole is responsible for the record, and the instrument which it approves as such is its record, however, the same may have been made up. It is immaterial to the sufficiency of a record whether the same was kept or written by the judge-advocate or a clerk. So where a clerk or reporter, appointed and sworn to keep the record, did not act, but the record was prepared by the judge-advocate or some other person employed by him to assist him, *held* that this circumstance did not affect the validity of the record as finally approved by the court. (Ibid., 649, par. 5.)

The record of a trial by court-martial should include a record of meetings where no business is transacted. (Ibid., 650, par. 6.)

Recommended that, after the record of the organization at the first session, it be

*held* that the regularity or validity of the minor details of the proceedings may be shown by evidence outside the record. (Van Deusen v. Sweet, 51 New York, 378.) Similarly, it is believed, no omission or error in a record of court-martial, not in contravention of express statute, should, as a general rule, be regarded as absolutely invalidating the proceedings where there remains enough in the record fairly to warrant the presumption that the legal requirements have been complied with, or where the reviewing authority can supply the defect from his own official knowledge, or from current orders or other satisfactory evidence readily available to him. So where no copy of the convening order accompanies the proceedings, but the reviewing authority, from the fact of having issued it himself or from the records of the command or otherwise, is officially apprized that the court was duly convened, the proceedings are not to be treated as fatally defective, but—the court appearing in fact to have been constituted and to have acted pursuant to the order—may be regarded as valid in law though imperfectly recorded. Where, indeed, the record discloses in the proceedings of a general court-martial an irreparable defect in a vital particular, as the fact that the court was composed of but four members, the proceedings and sentence, if any, must be held inoperative, since the statute law, article 75, has fixed five members as the legal minimum for such a court. But where the defect occurs in a less material feature, or is one of form only, the same, while it may, if of a grave character, properly warrant a disapproval of the proceedings, in case it can not be removed by a revision by the court on being reassembled for the purpose, will not in general, it is held, justify the reviewing authority in pronouncing the proceedings to be void, or in treating them as necessarily without legal effect.

α See G. C. M. O., Department of the East, 870.



THE REVIEWING AUTHORITY.<sup>1</sup>

Approval of  
sentence by offi-  
cer ordering  
court.

## 104 Art. War.

**1314.** No sentence of a court-martial shall be carried into execution until the same shall have been approved by the

simply entered at the beginning of a day's session: "Present, all the members and the judge-advocate." Also, that when the absence of an officer who has not qualified, or has been relieved or excused, has been accounted for, no further notice be taken of it. (*Ibid.*, par. 7.)

It is not customary to take notice in the record of a mere recess; but if a recess be noted at all it should appear from the record that on the reassembling the members, judge-advocate, and accused were duly present. (*Ibid.*, par. 8.)

When the court closes, the record should (now) properly set forth that the judge-advocate withdrew. (Act of July 27, 1892, sec. 2.) But an absence of a statement to this effect will not impair the legal validity of the record. Where it simply appears from the record that the court "closed," the presumption will be that, in closing, the requirements of law were observed. (*Ibid.*, par. 9.)

The record need not show affirmatively that the accused was offered an opportunity to cross-examine; where it appears that he did not cross-examine, the presumption will be that he waived the privilege. So the record need not state that the accused was notified of his privilege of being assisted by counsel. So it need not specifically state or show that the court adjourned at or before 3 o'clock p. m. In the absence of evidence to the contrary, it will be presumed to have done so. There is always a presumption, in the absence of obvious irregularity, that the proceedings were regular and according to law. (*Ibid.*, par. 10.)

It is not essential that the record of the court should show that the judge-advocate called the attention of the accused to the fact of his privilege of testifying in his own behalf. (G. O. 75 of 1887 requires only that this be done "before the assembling of the court.") (*Ibid.*, par. 11.)

Where the record of a trial failed to show that the court or judge-advocate was sworn, *held* that the conviction and sentence were without legal validity. The qualification by swearing is enjoined as a necessary preliminary by articles of war 84 and 85, and the record must show affirmatively whatever is made by statute essential to its jurisdiction and the legality of its proceedings. (*Ibid.*, par. 12.)

A mere clerical error in the spelling of the name of the accused, leaving it *idem sonans*, is not a case of misnomer and does not affect the validity of the proceedings as recorded. (*Ibid.*, 651, par. 13.)

It is not necessary to encumber a record by spreading upon it documents or other writing or matter excluded by the court. But it should specify the character of the writing and the grounds upon which it was ruled out. (*Ibid.*, par. 14.)

A record can not legally be corrected by an interlineation by the judge-advocate, as by the words "at hard labor" interlined in the sentence. Nor can it legally be corrected by a statement on the margin of a page, signed by the judge-advocate. (*Ibid.*, par. 15.)

Paragraph 955, Army Regulations of 1895, prescribes that the officer who passes upon the sentence of a court-martial "shall state at the end of the proceedings in each case his decision and orders thereon." *Held* that this provision was directory merely, and that it was not essential to the validity of the proceedings that the action of the President or commander should be indorsed upon or attached to the record, but was sufficient, to give effect to a sentence, that the approval should appear in a separate official order. (*Ibid.*, par. 16.)

*Held* that the destruction, by fire or other casualty, of the record of the trial, conviction, and sentence of a deserter, before action could be taken upon the same, was of similar effect in law to an acquittal, and relieved the deserter from the forfeiture of pay due at the date of his desertion. (*Ibid.*, par. 17.)

Where there have been two or more judge-advocates successively detailed in the course of a trial, the one who is acting at the close is the one (and the only one) required to authenticate the proceedings by his signature. (*Ibid.*, p. 461, par. 22.)

<sup>1</sup> This term is employed in military parlance to designate the officer whose province and duty it is to take action upon—approve or disapprove, etc.—the proceedings of a court martial after the same are terminated, and when the record is transmitted to him for such action. This officer is ordinarily the commander who has convened the court. In his absence, however, or where the command has been otherwise changed, his successor in command, or, in the language of articles 104 and 109, "the officer commanding for the time being," is invested (by those articles) with the same authority to pass upon the proceedings and order the execution of the sentence in a case of conviction. (Dig. Opin. J. A. Gen., 670, par. 1.)

In cases, however, of sentences of dismissal and of death, imposed in time of peace, and of some death sentences adjudged in time of war, as also of all sentences, "respecting general officers," while the convening officer (or his successor) is the original reviewing authority, with the same power to approve or disapprove as in other cases, yet, inasmuch as it is prescribed by articles 105, 106, 108, and 109 that the sentence shall not be executed without the confirmation of the President, the latter becomes in these cases the final reviewing officer, when, the sentence having been approved by the commander (for, if disapproved by him, there is nothing left to be acted upon by the superior), the record is transmitted to him for his action. A similar division of the reviewing function exists in cases in which sentences are approved, but the execution of the same is suspended, and the question of their execution referred to the President, under article 111. The same function is also shared between inferior and superior commanders, under article 107, in cases in which sentences are imposed by division or separate brigade courts. So, under article 110, in cases of sentences adjudged by field officers' courts in time of war.

Where a general court-martial is convened directly by the President, as Commander in chief, he is, of course, both the original and final reviewing authority. (*Ibid.*) See, also, in connection with the review of proceedings, pp. 66-69, **MANUAL FOR COURTS-MARTIAL.**

officer ordering the court, or by the officer commanding for the time being.<sup>1</sup> *One hundred and fourth Article of War.*

<sup>1</sup> While approval gives life and operation to proceedings or sentence, disapproval, on the other hand, quite nullifies the same. A disapproval of the proceedings of a court-martial by the legal reviewing authority is not a mere expression of disapprobation, but a final, determinate act, putting an end to such proceedings in the particular case, and rendering them entirely nugatory and inoperative; and the legal effect of a disapproval is the same whether or not the officer disapproving is authorized finally to confirm the sentence. But to be thus operative a disapproval should be express. As frequently remarked in the opinions of the Judge-Advocate General, the mere absence of an approval is not a disapproval, nor can a mere reference of the proceedings to a superior without words of approval operate as a disapproval of the proceedings or sentence. (a) The effect of the disapproval, wholly, of a conviction or sentence is not merely to annul the same as such, but also to prevent the accruing of any disability, forfeiture, etc., which would have been incidental upon an approval. (b) A disapproval of a conviction of a particular offense also operates to nullify the conviction of any lesser included offense, involved in the conviction of the specific offense charged.

Where the original reviewing officer disapproves a sentence, to the execution of which the confirmation of superior authority is made requisite by the code, as where (in time of peace) the department commander who has convened the court, in the case of an officer, disapproves a sentence of dismissal adjudged thereby, the sentence being nullified in law, there remains nothing for the superior authority to act upon, and to transmit the proceedings to him for action will be improper and unauthorized.

A reviewing officer can not disapprove a sentence and then proceed to mitigate or commute the punishment, since, upon the disapproval, there is nothing left in the case upon which any such action can be based.

It is quite immaterial to the legal effect of a disapproval whether any reasons are given therefor, or whether the reasons given are well founded in fact or sufficient in law. (Dig. Opin. J. A. Gen., 671, par. 2.)

The authority of a military commander as reviewing officer is limited to taking action upon the proceedings and sentence (if any), by approving or disapproving the same (in whole or in part), and directing the execution of the sentence, and to the incidental function, as conferred by article 112, of pardoning or mitigating the punishments which have been approved by him. Action not included within these powers he is not authorized to take. Thus, he can not himself correct the record of the court by striking out any part of the finding or sentence, or otherwise, nor can he in general change the order in which different penalties are adjudged by the court to be suffered, nor can he add to the punishment imposed by the court, though deemed by him quite inadequate to the offense. A reviewing officer, however, may, in general, specify the reasons for the action taken by him, without transcending his authority. Thus, where a department commander disapproved a sentence as inadequate, and in stating his grounds for so doing commented unfavorably upon the conduct of the accused as indicated by the evidence, held that such comments were a legitimate explanation of the action taken, and did not constitute an adding to the punishment. (Ibid., 672, par. 3.)

Where the reviewing officer deems that the proceedings of the court are in any material particular erroneous or ill advised, his proper course in general will be to reconvene the court for the purpose of having the defect corrected, at the same time furnishing it with the grounds of his opinion. Thus, if he regards the sentence inadequate, he should, in reassembling the court for a revision of the same, state the reasons why he considers it to be disproportionate to the amount of criminality involved in the offense. But although he can not compel the court to adopt his views in regard to the supposed defect, he may, in a proper case, express his formal disapprobation of their neglect to do so. Thus where a court-martial, on being reconvened, with a view of giving it an opportunity to modify a sentence manifestly too lenient for the offense found, decided to adhere to the sentence as adjudged, and, on being again reassembled to consider further grounds presented by the reviewing commander for the infliction of a severer penalty, again declined to increase the punishment, held that it was within the authority of the reviewing officer, and would be no more than proper and dignified for him, in taking final action upon the case, to reflect upon the refusal of the court as ill judged and as having the effect to impair the discipline and prejudice the interests of the military service. (Ibid., 673, par. 4.)

In passing upon the findings and sentence of a court-martial, the reviewing officer will properly attach special weight to its conclusions where the testimony has been of a conflicting character. This for the reason that, having the witnesses before it in person, the court was qualified to judge, from their manner in connection with their statements, as to the proper measure of credibility to be attached to them individually. (c) (Ibid., 674, par. 5.)

The reviewing authority should properly authenticate the action taken by him in any case by subscribing in his own hand (adding his rank and command, as indi-

<sup>a</sup> See 16 Opin. Att. Gen., 312, where it is remarked that it is not a legal disapproval of a conviction or sentence for the original reviewing officer, in forwarding the proceedings for the action of superior authority, to indorse upon the same an opinion to the effect that the finding is not sustained by the evidence.

<sup>b</sup> A disapproval of a sentence by the proper reviewing authority is "tantamount to an acquittal by the court." (13 Opin. Att. Gen., 460.)

<sup>c</sup> See the early case of Captain Weisner, Am. Archiv., 5th series, vol. 2, p. 895. So civil courts will rarely interfere, except in cases of clear injustice, with verdicts of juries which have turned upon the credibility of witnesses. Wright v. State, 34 Ga., 110; Whitten v. State, 47 ibid., 297.

Confirmation of death sentence.

105 Art. War.  
July 17, 1862, c. 201, s. 5, v. 12, p. 598; Mar. 3, 1863, c. 75, s. 21, v. 12, p. 735; July 2, 1864, c. 215, s. 1, v. 13, p. 356.

1315. No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of guerilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted

ating his legal authority to act) the official statement of the same as written in or upon the record. Impressing the signature by means of a stamp is not favored. (*Ibid.*, par. 6.)

Action taken by a reviewing officer upon the proceedings and sentence of a court-martial may be recalled and modified before it is published and the party to be affected is duly notified of the same. After such notice the action is beyond recall. The power of remission, indeed, may be exercised so long as any part of the punishment imposed remains unexecuted. But when the final approval of the sentence (or other action taken) has been once officially communicated to the accused, the function and authority of the reviewing authority as such over and respecting the same is exhausted and can not be revived. An approval can not then be substituted for a disapproval, or vice versa. (*Ibid.*, par. 8.)

A disapproval of a finding by the proper reviewing authority has the same legal effect as an acquittal, and the soldier can not be made to suffer any of the legal consequences of a conviction. (See paragraph 2, ante.) (*Ibid.*, 675, par. 9.)

*Held* a good ground for the disapproval of a sentence that the court denied the request of the accused to have summoned a clearly material and important witness, whose testimony would not have been merely cumulative. (*Ibid.*, par. 10.)

It is beyond the power of the reviewing officer to change, by his own action, a finding. Thus where, in a case of conviction of desertion, the reviewing authority approved "so much only of the finding of guilty of desertion as convicted the accused of absence without leave," *held* that he thus substituted a finding of his own for that of the court, and that his action was unauthorized. (*Ibid.*, par. 11.)

It is within the authority of a department commander, as reviewing officer, in a case in which a soldier of his command has been sentenced to confinement in a penitentiary, to designate a particular penitentiary within such command as the place of confinement. (*Ibid.*, par. 12.)

It is an established principle that when the final action of the reviewing officer has been published in orders to the command and notified to the accused, his power of approval and disapproval in the case is exhausted, and his action can not be recalled or modified. Where a department commander applied to the War Department for the return of the proceedings of a case in order that he might modify his action thereon, *held* that as the same had been formally promulgated in orders and had duly taken effect, the power of the reviewing officer over the case was exhausted, and the application could not legally be complied with. (*Ibid.*, par. 13.)

A sentence to forfeit certain pay was approved, and such approval promulgated in orders of February 18, 1865. On March 10 following, the reviewing officer "reconsidered" his action and by another order disapproved the sentence, and this order was also promulgated. *Held* that the latter order was of no effect. The first order executed the forfeiture, making the amount forfeited public money, and exhausted the power of the reviewing authority. (*Ibid.*, 676, par. 14.)

But where, after the reviewing commander had approved a sentence in general orders, and the court had been dissolved, it was discovered that there was a fatal defect in the proceedings in that they did not show that the court or judge-advocate had been sworn in the case, *held* that the commander would properly issue a supplemental order declaring the proceedings a nullity and the original order inoperative and withdrawn on account of the defect. (*Ibid.*, par. 15.)

Where the convening commander dissolves a court pending a trial, his power as to that court is exhausted and he can not revive it as such. He may reconvene the same members as a court-martial, but it will be another and distinct tribunal. (*Ibid.*, par. 16.)

In acting upon the proceedings of a court-martial, the legal reviewing officer acts partly in a judicial and partly in a ministerial capacity. He "decides" and "orders," and the due exercise of his proper functions can not be revised by superior military authority. Thus *held* that a reviewing officer who had duly acted upon a sentence and promulgated his action in orders could not be required by a higher commander, or by the Secretary of War, to revoke such action. If the sentence be deemed unwarranted or excessive, relief may be extended through the power of pardon or remission. (*Ibid.*, par. 17.)

This article is properly to be complied with by an approval of the sentence (where the same is approved in fact) by "the officer ordering the court," etc., although—as in a case of a sentence of dismissal in time of peace—he may not be empowered finally to confirm and give effect to the sentence. His approval is required as showing that he does not, as he is authorized to do, disapprove. (*Ibid.*, 126, par. 1.)

The approval of the sentence indicated by this article should properly be of a formal character. An indorsement, signed by the commander, of the single word "approved"—a form not unfrequently employed during the late war—though strictly sufficient in law, is irregular and objectionable. So, *held* that a mere statement, written in or upon the proceedings, in transmitting them to the President, that the record was "forwarded" for the action of superior authority, was insufficient as not implying the requisite approval according to the article. And similarly *held* of a mere recommendation that the proceedings be approved by such authority. (*Ibid.*, par. 2.)

A military commander can not, of course, delegate to an inferior or other officer his

cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.

*One hundred and fifth Article of War.*

1316. In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.<sup>1</sup>

Confirmation of sentences of dismissal in time of peace.  
106 Art. War.

*One hundred and sixth Article of War.*

function as reviewing authority of proceedings or sentence of a court-martial, as conferred by the one hundred and fourth or one hundred and ninth article of war or other statute. Nor can he, regularly, authorize a staff or other officer to write and subscribe for him the action, by way of approval, disapproval, etc., which he has decided to take upon such proceedings. An approval purporting to be subscribed by the commander, "by" his staff judge-advocate or assistant adjutant-general, would be open to question and quite irregular, as would also be any action subscribed by such an officer purporting to be taken "in the absence and by the direction of" the commander. (Ibid., 674, par. 7.)

Held that a department commander could not legally depute a staff or other officer to act for him, while absent from his headquarters on an expedition against Indians, in approving, etc., the sentences of courts-martial previously duly convened by him. (Ibid., 126, par. 4.)

The "officer commanding for the time being," indicated in this article, is an officer who has succeeded to the command of the officer who convened the court, as where the latter has been regularly relieved and another officer assigned to the command, or where the command of the convening officer has been discontinued and merged in a larger or other command, at some time before the proceedings of the court are completed and require to be acted upon. Thus where, under the circumstances, a separate brigade has ceased to exist as a distinctive organization and been merged in a division, or a division has been similarly merged in an army or department, the commander of the division in the one case, and of the army or department in the other, is "the officer commanding for the time being," in the sense of the article. So where, before the proceedings of a garrison court convened by a post commander were completed, the post command had ceased to exist and the command become distributed in the department, held that the department commander, as the legal successor of the post commander, was the proper authority to approve the sentence under this article. (Ibid., 127, par. 5.)

Where a department command was discontinued, without being transferred to or included in any other specific command, held that the general in command of the army was "the officer commanding for the time being," and the proper authority to act, under this article and the one hundred and ninth, upon the proceedings and sentence of a court which had been ordered by the department commander, but whose judgment had not been completed at the time of the discontinuance of the command. (Ibid., par. 6.)

The "officer commanding for the time being" must, to legally act, have the necessary qualifications. Thus, where the sentence is one of a general court-martial, this officer must have the same rank and status as the convening officer must have had under the seventy-second article, i. e., he must be either a general officer commanding the army, division, or department, or a colonel commanding the department. (Ibid., par. 7.)

<sup>1</sup>The article does not require that the confirmation of the sentence shall be signed by the President, nor does it prescribe any form in which the confirmation shall be declared. Held, therefore, that a written approval of a sentence of dismissal authenticated by the signature of the Secretary of War, or expressed to be by his order, was a sufficient confirmation within the article; the case being deemed to be governed by the well-established principle that where, to give effect to an Executive proceeding, the personal signature of the President is not made essential by law, that of the head of the department to which the subject belongs shall be sufficient for the purpose; the assent of the President to his order or direction being presumed, and his act being deemed in law the act of the President whom he represents. (a) (Dig. Opin. J. A. Gen., 128, par. 2.)

The word "approved," employed by the President in passing upon a sentence of dismissal, held to be substantially equivalent to "confirmed," the word used in the article. In practice the two words are used indifferently in this connection. (Ibid., par. 1.)

This subject has been more recently considered by the United States Supreme Court in a succession of cases (Runkle v. U. S., 122 U. S., 543; U. S. v. Page, 137 U. S., 673; U. S. v. Fletcher, 148 U. S., 84), the effect of which is that a statement of approval of a sentence of dismissal, authenticated by the Secretary of War, is legally sufficient, provided that it appear, by clear presumption therefrom, that the proceedings have actually been submitted to the President.

In an opinion of the Attorney-General of April 1, 1879 (16 Opins., 298), it was held that a confirmation of a sentence of dismissal of an officer, though irregularly and unduly authenticated, would be ratified by an appointment by the President of another officer to fill the supposed vacancy, and that the appointment thus made would be valid and operative.

<sup>a</sup>This view has been sustained by an opinion of the Attorney-General of June 6, 1877 (15 Opins., 290), and by a report of the Judiciary Committee of the Senate of March 3, 1879, report No. 868, Forty-fifth Congress, third session. (From this report, indeed, two members of the committee dissented in a subsequent report of April 7, 1879, Mis. Doc. No. 21, Forty-sixth Congress, first session.)

The same, confirmation by division or brigade commanders.

Dec. 24, 1861, c. 3, v. 12, p. 330.

107 Art. War.

The same, sentences respecting general officers.

108 Art. War.

The same, confirmation by officer ordering court.

109 Art. War.

Suspension of sentences of death or dismissal pending Executive action.

111 Art. War.

Pardon and mitigation of punishment.

July 17, 1862, c. 201, s. 7, v. 12, p. 598.

112 Art. War.

**1317.** No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs. *One hundred and seventh Article of War.*

**1318.** No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President. *One hundred and eighth Article of War.*

**1319.** All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department, is not required by these articles. *One hundred and ninth Article of War.*

**1320.** Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.<sup>1</sup> *One hundred and eleventh Article of War.*

**1321.** Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.<sup>2</sup> *One hundred and twelfth Article of War.*

<sup>1</sup> An officer suspending the execution of a sentence for the action of the President under this article should first formally approve the same. Simply to forward the proceedings, stating that the sentence has been suspended, is incomplete and irregular. If the commander disapproves the sentence, he can not, of course, suspend and transmit under this article, since there remains nothing for the President to act upon. (Dig. Opin. J. A. Gen., 129, par. 1.)

Where a case is submitted to the President for his action under this article, he may approve or disapprove the sentence in whole or in part, and, if approving, may exercise the power of remission or mitigation. (Ibid., par. 2.)

<sup>2</sup> The power to remit or commute (see paragraph 5, post) sentences of death and dismissal is reserved by this article for the President. A military commander can not exercise such power, even where, in time of war, he is authorized to approve and execute the sentence. He may then, however, if he thinks that the sentence should be remitted or commuted, suspend its execution for the action of the President (with a recommendation to clemency) under the preceding article. (a) (Ibid., p. 129, par. 1.)

A military commander vested with the power of pardon or mitigation under this article is not authorized to delegate the same to an inferior. Thus held that a department commander could not legally authorize a post commander to remit in part, upon good behavior, the punishment of a soldier under sentence at the post of the latter, who had been convicted by a general court, convened, and whose proceedings had been acted upon, by the former. (Ibid., 130, par. 2.)

A punishment can not be pardoned or mitigated under this article where it has

**1322.** Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person Party entitled to a copy of record.  
114 Art. War.

been once duly executed. Where, however, a sentence has been executed only in part, it may be remitted as to the portion remaining unexecuted. (*Ibid.*, par. 3.)

The pardoning power here given is not limited in its exercise to the moment of the approving of the sentence, but may be employed as long as there remains any material for its exercise. Under this article, as interpreted by the usage of the service, a department (or army) commander may remit at any time, in his discretion, for any cause deemed by him to be sufficient, the unexecuted portion of the sentence of any soldier confined in his command under a sentence imposed by a court-martial convened by him or by a predecessor in the command. (*Ibid.*, 130, par. 4.)

The reviewing authority, in approving the punishment adjudged by the court and ordering its enforcement, is authorized, if he deems it too severe, to graduate it to the proper measure by reducing it in quantity or quality, without changing its species; this is mitigation. (a) Imprisonment, fine, forfeiture of pay, and suspension are punishments capable of mitigation. As an instance of a mitigation both in quantity and quality, *held* that a sentence of imprisonment for three years in a penitentiary was mitigable to an imprisonment for two years in a military prison. (*Ibid.*, 131, par. 5.)

*Held* that it was not a due exercise of the power given by this article, but irregular and unauthorized, for a post commander to suspend the execution of the sentence of a garrison court convened by him during good behavior on the part of the soldiers sentenced. (*Ibid.*, par. 6.)

*Held* that a reviewing officer other than the President was not empowered by this article to commute a punishment; that the "pardon" here specified was remission, which, unlike the pardoning power vested in the President, did not include commutation or conditional pardon. So, *held* that a reviewing commander was not authorized to commute the punishment of dishonorable discharge, and that, as such punishment was not susceptible of mitigation, it could not legally be reduced under this article. (*Ibid.*, par. 7.)

The substitution of the punishment of confinement for that of dishonorable discharge, imposed by sentence of court-martial, would not, of course, be authorized by way of mitigation (which can not change the nature of the punishment), but may be affected by a commutation of the sentence by the President, accepted by the soldier. (See the action of the President in the case of Private Hayes, Fifth Artillery, in G. C. M. O. 58 of 1888.) (*Ibid.*, par. 8.)

Where a prisoner is serving out a sentence of imprisonment at a military prison or place of confinement within the command of the officer who approved the proceedings, such officer (or his successor in the command) may, under this article, remit at any time the unexpired portion of the pending confinement, (b) although the punishment of dishonorable discharge, imposed by the same sentence, may meanwhile have been duly executed. (*Ibid.*, par. 9.)

A soldier was sentenced to be confined for a term, and at the end of such term to be dishonorably discharged. At the end of the term he was at once restored to duty and continued on duty. *Held* that such restoration operated as a constructive pardon and remitted the unexecuted part of the sentence, to wit, the punishment of dishonorable discharge. (c) (*Ibid.*, 132, par. 10.)

A punishment in itself illegal is not capable of mitigation. Thus, where a sentence of imprisonment in a penitentiary is not legally authorized, it can not be made valid by mitigating this imprisonment to confinement in a military prison. In such case the latter will be equally invalid and inoperative with the original punishment. (*Ibid.*, par. 11.)

A substitution, for a punishment of dishonorable discharge with loss of all pay and allowances due and to become due, of a punishment of confinement at hard labor at the post for one year, with forfeiture of \$10 per month for the same period, *held* not a legitimate mitigation. (*Ibid.*, par. 12.)

Where a sentence of dishonorable discharge, with forfeiture of all pay and allowances and confinement at hard labor for four years, was mitigated to confinement for one year, with forfeiture of \$10 per month for the same period, *held* that the same was regular and legal and not in contravention of circular No. 2 (H. A.) of 1885. (*Ibid.*, 132, par. 13.)

Dishonorable discharge can not legally be mitigated to "discharge without a character." The latter is not a recognized punishment. (*Ibid.*, par. 14.)

Where a sentence consists of several punishments, the reviewing officer can not so exercise the power of mitigation as to exceed in any instance the maximum punishment established by law and orders. Thus he would not be authorized by way of mitigation to reduce a confinement, while at the same time adding to a forfeiture so as to make it in excess of the maximum forfeiture legally allowable for the offense. (*Ibid.*, 133, par. 19.)

An officer under a sentence of suspension for five years, with forfeiture of one-quarter of his pay, applied to be allowed to receive his full pay for three months, the forfeiture imposed by the sentence for these months to be satisfied in one sum from the pay of the month next succeeding. *Held* that such action—for which there was no precedent—would have to be taken, if at all, by way of mitigation, but that the same would amount to a postponement of the execution (of a part) of the sentence, which would not be legitimate mitigation. (Compare paragraph 951, Army Regulations of 1895.) (*Ibid.*, 132, par. 20.)

<sup>a</sup>See opinion of Judge-Advocate-General published in G. O. 71, War Department, 1875; 1 Opin. Att. Gen., 327; 4 *ibid.*, 444. (It may be noted that these early opinions of the Attorney-General inaccurately describe the substitution of a lesser punishment for a death sentence as a mitigation, the proceeding being properly commutation.)

<sup>b</sup>The counter opinion of the Attorney-General, in 19 Opins., 106, was not adopted by the Secretary of War or followed in practice, as is shown by the terms of paragraph 1044, Army Regulations [1889].

<sup>c</sup>See 6 Opin. Att. Gen., 715.

in his behalf, be entitled to a copy of the proceedings and sentence of such court.<sup>1</sup> *One hundred and fourteenth Article of War.*

#### REGIMENTAL COURTS-MARTIAL.

Regimental  
courts-martial.  
81 Art. War.  
July 17, 1862, c.  
201, s. 7, v. 12, p.  
598.

**1323.** Every officer commanding a regiment or corps shall, subject to the provisions of article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.<sup>2</sup> *Eighty-first Article of War.*

<sup>1</sup> A copy of the proceedings and sentence can not properly be furnished under this article till the same have been finally acted upon and such action has been promulgated in the usual manner. (Dig. Opin. J. A. Gen., 133, par. 1.)

A person applying for the copy "in behalf" of the accused should exhibit some satisfactory evidence that he duly represents the accused as his agent, attorney, or otherwise. Where it does not satisfactorily appear that the party is applying for and on behalf of the accused he can not be furnished with the copy as of right under the article. A person other than the accused applying on his own account is not entitled to the copy. The fact that the applicant is a member of the family of the accused does not entitle him to the copy in the absence of evidence that he applies at the instance or in behalf of the accused. A party applying in behalf of "friends and creditors" of the accused, *held* not entitled to a copy of the record of his trial. So *held* of one who subscribed his application merely as "attorney at law," without showing that he was authorized to act for the accused. (Ibid., 134, par. 2.)

Applications for copies under this article may be, and in practice commonly are, addressed in the first instance to the Judge-Advocate-General, who thereupon furnishes the copy, certified by him as correct, at the expense of the United States, provided the application is made by the accused or in his behalf. If not, he can furnish the copy only by the special authority of the Secretary of War. Any person desiring a copy of the record of a court-martial, or of any portion of a record, who is not entitled to be furnished with the same by the terms of this article, should apply therefor to the Secretary of War, stating the reason for his application, in order that it may appear that he makes the same in good faith and for a proper purpose. If the application is approved by the Secretary, it will be referred to the Judge-Advocate-General, who will then have the copy prepared and transmitted. (Ibid., par. 3.)

The accused or other person entitled under this article to be furnished with a copy of a record of trial is not entitled to be furnished with a copy of a report of the Judge-Advocate-General made upon the case. To receive this special authority must be obtained from the Secretary of War. (Ibid., par. 4.)

The furnishing of a copy of a record of a general court-martial to a person other than the accused and not applying in his behalf will, as a general rule, be authorized by the Secretary of War where the application is evidently made in the interest of justice and the copy furnished will clearly subserve a good and desirable purpose. But this must be made certainly to appear. (Ibid., 135, par. 5.)

It is only a party "tried by a general court-martial" who is entitled by the article to the copy. Parties desiring copies of records of courts of inquiry, for use in evidence under article 121, or for other purpose, must apply to the Secretary of War. Such copies, however, are rarely accorded, except for use under article 121. (Ibid., par. 6.)

This article does not authorize the furnishing of a copy of the record of trial to the widow of the accused or other person applying after his decease. (Ibid., par. 7.)

The "proceedings and sentence" of the court, with a copy of which the accused is entitled to be furnished under this article, does not include the action of the reviewing authority as indorsed upon or attached to the record of trial, and it is not the usage to include this in the copy. (Ibid., par. 8.)

<sup>2</sup> *Held* that the Chief of Engineers was authorized to order a court under this article for the trial of soldiers of the engineer battalion; the same, in connection with the engineer officers of the Army, being deemed, in view of sections 1094, 1151, 1154, etc., of the Revised Statutes, to constitute a "corps" in the sense of the article. So *held* that the Chief of Ordnance was authorized to convene such a court for the trial of the enlisted men authorized by section 1162, Revised Statutes, to be enlisted by him; the same being deemed to constitute, with the ordnance officers, such a separate and distinct branch of the military establishment as to come within the general designation of "corps" employed in the article. So *held* that the Chief Signal Officer, under the provisions of the acts of July 24, 1876, June 20, 1878, etc., relating to his branch of the service, was authorized to order courts-martial, as commanding a "corps" in the sense of this article. (Dig. Opin. J. A. Gen., 92, par. 1.)

It is not necessary that an order convening a court under this (or the next) article, in time of war, should state in terms that it is not practicable to detail a field officer under article 80. It is good practice, however, and not unusual, to add a statement to this effect. (Ibid., 93, par. 2.)

Under paragraph 898, Army Regulations of 1861, it devolved upon a department commander to supervise the proceedings of regimental and garrison courts-martial transmitted to his headquarters, and if he discovered any material error, defect, or omission in a record or in the action taken in the case by the inferior commander, to return the proceedings to the latter, calling his attention to the correction deemed proper to be made. (This paragraph is not contained in the regulations of 1889 or 1895.) (Ibid., par. 3.) See, also, *MANUAL FOR COURTS-MARTIAL*, p. 82.



1324. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.<sup>1</sup> *Thirtieth Article of War.*

Redress of  
wrongs.  
30 Art. War.

#### FIELD OFFICERS' COURTS.

1325. In time of war a field-officer may be detailed in every regiment, to try soldiers thereof for offenses not capital; and no soldier, serving with his regiment, shall be tried by a regimental<sup>2</sup> garrison court-martial when a field-officer of his regiment may be so detailed.<sup>3</sup> *Eightieth Article of War.*

Field-officers'  
courts.  
July 17, 1862, c.  
201, s. 7, v. 12, p.  
598.  
80 Art. War.

<sup>1</sup>This article is not inconsistent with article 83, which prohibits regimental courts from trying commissioned officers. It does not contemplate or provide for a trial of an officer as an accused, but simply an investigation and adjustment of some matter in dispute—as for example, a question of accountability for public property, of right to pay or to an allowance, of relief from a stoppage, etc. The regimental court does not really act as a court, but as a board, and the “appeal” authorized is practically from one board to another. (a) But though the regimental court has no power to find “guilty” or “not guilty,” or to sentence, it should come to some definite opinion or conclusion, one sufficiently specific to allow of its being intelligently reviewed by the general court, if desired. (b) (Dig. Opin. J. A. Gen., 35, par. 1.)

The proceeding under this article, not being a trial, is not affected by the limitation of the one hundred and third article. Due diligence, however, should be exercised in presenting the complaint, and a delay in a certain case to do so for three years (not satisfactorily explained), held wholly unreasonable and properly treated by the court as seriously prejudicing the complaint. (Ibid., par. 2.)

The authority to summon a regimental court under this article is vested in terms in the regimental commander. A department or other superior commander can not properly exercise such authority, nor will his order add to the validity or effect of the proceeding. (Ibid., par. 3.)

The court can not take cognizance of a complaint against an officer no longer in the service. So, where a company commander, having entered on the pay rolls an unauthorized stoppage against a soldier, had resigned, and the same stoppage was thereupon continued by his successor, held that the complaint should be presented against the latter. (Ibid., par. 4.)

Where the alleged wrong was charged upon certain officers' servants, and it did not appear that their acts were authorized or sanctioned by the officers who employed them, held that the complaint was not one which could be taken cognizance of under this article. (Ibid., par. 5.)

There are two manifest and unqualified limitations to the province of the regimental court under this article, viz: (1) It can not usurp the place of a court of inquiry; (2) it can take no cognizance of matters which it would be beyond the power of the regimental commander to redress. When the matter is beyond the reach of this commander, it is beyond the jurisdiction of this court. If it involve a question of irregular details, excessive work or duty, wrongful stoppages of pay, or the like, a regimental court under this article may be resorted to for the correction of the wrong. Otherwise when the case is one of a wrong such as can be righted only by the punishment of the officer. (Ibid., 36, par. 6.)

See also note to Thirtieth Article of War.

<sup>2</sup>The word “or” omitted from the roll.

<sup>3</sup>While the original statute (act of July 17, 1862, chap. 201, sec. 7) providing for field officers' courts was open to the construction of authorizing these courts at all times, whether in war or in peace, and was quite generally regarded as so authorizing the same, the law as reenacted in the present article, in the Code of 1874, expressly limits the detailing of field officers as courts to “time of war.” The field officer's court thus became unauthorized from and after June 22, 1874, the date on which the present article took effect as part of the Revised Statutes. The article substitutes the field officer's court for the regimental or garrison court in time of war, in all cases arising in a regiment for the trial of which it is practicable to detail a field officer of the regiment. (Dig. J. A. Gen., 90, par. 1.)

The field officer will properly be detailed by the colonel or commanding officer of the regiment, wherever there is a field officer (other than such commander) on duty

α See Macomb, secs. 193, 194; G. O. 13, War Department, 1843; 1 Opin. Att. Gen., 167.

β See MANUAL FOR COURTS-MARTIAL, p. 89, note.





Confirmation of sentences.

July 17, 1862, c. 201, s. 7, v. 12, p. 598; July 27, 1892, v. 27, p. 278.

110 Art. War.

**1326.** No sentence adjudged by a field-officer, detailed to try soldiers of his regiment, shall be carried into execution until the same shall have been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp. *Act of July 27, 1892 (27 Stat. L., 278).*

#### GARRISON COURTS-MARTIAL.

Garrison courts-martial.

July 17, 1862, c. 201, s. 7, v. 12, p. 598; Feb. 18, 1875, c. 80, v. 18, p. 318.

82 Art. War.

**1327.** Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of article [ninety-five,] [eighty] be competent to appoint, for such garrison or other place, courts-martial, consisting of three officers, to try offenses not capital.<sup>1</sup> *Eighty-second Article of War.*

with it. In practice the major has generally been so detailed. Where there is present with the regiment but a single field officer, who is also the officer in command, such officer can not properly detail himself as a court; the detail in such cases should therefore be made by the next higher commander, as the brigade, division, or post commander in whose command the regiment is included. (*Ibid.*, par. 2.)

It is not necessary that an order convening a court under the eighty-first or the eighty-second article, in time of war, should state in terms that it is not practicable to detail a field officer under article 80. It is good practice, however, and not unusual, to add a statement to this effect. (*Ibid.*, 93, par. 2.)

The following commanders held not authorized to convene a field officer's court: A post commander whose command does not include a regiment; a commanding officer of a battalion; a commander of a draft rendezvous. (*Ibid.*, 90, par. 2.)

Only a field officer of a regiment can be detailed. A captain assigned to duty with his regiment, according to his brevet rank of major, is a field officer for the time, and may be detailed. A post commander can not be detailed as such. An ordnance officer (of field officer's rank) commanding a detachment at an arsenal can not be detailed. (*Ibid.*, 91, par. 3.)

Where a regiment, in time of war, contains no field officer eligible for the detail, a regimental or garrison court must be resorted to. (*Ibid.*, par. 4.)

The field officer has jurisdiction only to try soldiers of his regiment. His jurisdiction is coextensive with the regiment, and attaches generally, although the regiment for purposes of service is separated into portions, provided all the portions are under the command of the convening officer. But it does not extend to a company or portion of the regiment on detached service in a separate and distinct command. (*Ibid.*, par. 5.)

A field officer detailed as a court is not required to be sworn as such. (*Ibid.*, par. 6.)

The accused is not entitled to challenge the field officer. (*Ibid.*, 92, par. 9.)

The whole duty of the court is, in practice, performed by the field officer. No judge-advocate or recorder is required to be, or has been, employed. The field officer prepares his own record. (*Ibid.*, par. 7.) See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 80, 81.

The proceedings of the field officer are intended to be summary in their character.<sup>a</sup> It is not essential that the "officer commanding" should be of the rank of field officer. A commanding officer, though a captain or lieutenant, may convene a court-martial under this article, provided he has the required command. (*Dig. Opin. J. A. Gen.*, 93, par. 1.)

A commanding officer is not authorized to detail himself, with two other officers, as a court under this (or the preceding) article. An "acting assistant surgeon," not being an officer of the Army, can not be detailed on such court. (*Ibid.*, par. 2.)

The general term "other place" is deemed to be intended to cover and include any situation or locality whatever—post, station, camp, halting place, etc.—at which there may remain or be, however temporarily, a separate command or detachment in which different corps of the Army are represented, as indicated in the next paragraph. If such command, so situated, contains three officers, other than the commander, available for service on court-martial, the commander will be competent to exercise the authority conferred by this article. (*Ibid.*, par. 3.)

*Held*, in view of the early orders (b) relating to the subject and of the practice thereunder, that the presence on duty with a garrison, detachment, or other separate command, at a fort, arsenal, or other post or place, and as a part of such command, of a single representative, officer or soldier, of a corps, arm, or branch of the service other than that of which the bulk of the command is composed—as an officer of the quartermaster, subsistence, or medical department, a chaplain, an ordnance sergeant or hospital steward, an officer or soldier of artillery where the command consists of infantry or cavalry, or vice versa, etc.—might be deemed sufficient to fix upon the command the character of one "where the troops consist of different corps," in the sense of this article, and to empower the commanding officer to order a court-martial under

<sup>a</sup> For form of record, see *MANUAL FOR COURTS-MARTIAL*, p. 133.

<sup>b</sup> The original order is G. O. 5, Headquarters of Army, 1843. And see the law as announced later in G. O. 13, Fourth Military District, 1867.

1328. Regimental and garrison courts-martial, and field-officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any non-commissioned officer or soldier for a longer time than one month.<sup>1</sup> *Eighty-third Article of War.*

Jurisdiction of minor courts.  
July 17, 1862, c. 201, s. 7, v. 12, p. 598.  
83 Art. War.

#### THE SUMMARY COURT.

1329. That hereafter in time of peace all enlisted men charged with offenses now cognizable by a garrison or regimental court-martial shall, within twenty-four hours from the time of their arrest, be brought before a summary court, which shall consist of the line officers second in rank at the post or station or of the command of the alleged offender, and at stations where only officers of the staff are on duty the officers second in rank shall constitute such court, who shall have power to administer oaths and to hear and determine the case, and when satisfied of the guilt of the accused party adjudge the punishment to be inflicted. There shall be a summary court record-book or docket kept at each military post, and in the field at the headquarters of the command, in which shall be entered a

Summary courts; records; approval of sentence.  
Oct. 1, 1890, v. 26, p. 648.

Composition.

the same. The presence, however, with the command, of a civil employee of the Army (as an "acting assistant surgeon") could have no such effect. (*Ibid.*, 94, par. 4.)

Where, after a garrison court had tried the cases referred to it, but before its proceedings had been acted upon, the command of the post was devolved upon the officer who had been president of the court, *held* that such officer would legally and properly act upon the proceedings; the case not being one in which the action of the department or other higher commander was required by the one hundred and ninth article of war. (*Ibid.*, par. 5.) See, also, *MANUAL FOR COURTS-MARTIAL*, pp. 81, 82.

<sup>1</sup>Under this article, field officers' courts are invested with the same jurisdiction and power of punishment as regimental and garrison courts. (*Ibid.*, p. 94, par. 1.)

\*Capital offenses (i. e., offenses capitally punishable), not being within the jurisdiction of inferior courts, such courts can not take cognizance of acts specifically made punishable by article 21, however slight be the offenses actually committed. (a) (*Ibid.*, 94, par. 2.)

A sentence forfeiting pecuniary allowances in addition to pay, where the entire forfeiture amounted to a sum greater than one month's pay, *held* not authorized under this article. (*Ibid.*, 95, par. 3.)

A sentence, adjudged by a garrison court, of confinement "till the expiration of the term of service" of a soldier, *held* unauthorized unless the soldier had no more than one month left to serve. (*Ibid.*, par. 4.)

The limitation of the authority of inferior courts in regard to sentences of imprisonment and fine, *held* not to preclude the imposition by them of other punishments sanctioned by the usage of the service; such, for example, as reduction to the ranks, either alone or in connection with those or one of those expressly mentioned. (*Ibid.*, par. 5.)

The limitations imposed by the article have reference, of course, to single sentences. For distinct offenses made the subject of different trials, resulting in separate sentences, a soldier may be placed at one and the same time under several penalties of forfeiture and imprisonment, or either, exceeding together the limit affixed by the article for a single sentence. (b) (*Ibid.*, par. 6.)

While inferior courts have, equally with general courts, jurisdiction of all military offenses not capital, yet, in view of the limitations upon their authority to sentence, it is in general inexpedient to resort to them for the trial of the graver offenses, such as larcenies, aggravated acts of drunkenness, protracted absences without leave, etc., a proper and adequate punishment for which would be beyond the power of such tribunals. So, as a reviewing officer is never authorized to add to the punishment imposed by any court-martial, the more serious offenses should, where practicable, be referred for trial to general courts, which alone are vested with a full discretion to impose punishment in proportion to the gravity of the offense. (*Ibid.*, par. 7.)

a G. O. 21, Headquarters of Army, 1858. And see G. O. 18, War Department, 1859; G. O. 9, Department of Utah, 1858, where the proceedings of garrison courts in cases of capital offenses are pronounced void.

b See G. O. 18, War Department, 1859.

record of all cases heard and determined and the action had thereon, and no sentence adjudged by said summary court shall be executed until it shall have been approved by the post or other commander.<sup>1</sup> *Act of October 1, 1890* (26 Stat. L., 648).

<sup>1</sup> The act of October 1, 1890, c. 1259 (26 Stat. L., 648), substituted the summary court for the regimental or garrison court, in time of peace, much as the act of July 17, 1862, substituted for the latter court the field officer's court in time of war. (Dig. Opin. J. A. Gen., 724, par. 1.) For authority to remit or mitigate sentences, not conferred by this statute, see sec. 5 of the act of July 27, 1892 (27 Stat. L., 277), paragraph 1330, *post*. See also for procedure, etc., *MANUAL FOR COURTS-MARTIAL*, pp. 75-80.

The effect of the provisions of the act as to the personnel of the court *held* to be that when "the line officer second in rank at the post," etc., is the "accuser" in a case, the case shall be tried (not by either the post commander or a garrison or regimental court, but) by the post commander (unless the accused claim a trial by such court, etc.), and that when the post commander is the accuser the case shall be tried by a garrison or regimental court. This construction accords with the object of the statute, which is to substitute as far as possible the summary for the other inferior courts. Thus a garrison court (unless specially "requested") is not legal where under the act the post commander can officiate as the summary court. (*Ibid.*, 725, par. 2.)

Where a post commander sits as a summary court no approval of the sentence is required by law, but he should sign the sentence and date his signature. (a) A certification by the post adjutant is unnecessary and irregular and should not be permitted. (*Ibid.*, par. 3.)

A staff officer—as a surgeon—can not legally act as the summary court at a post of which the commander belongs to the line. (*Ibid.*, par. 4.)

*Held* that the passed assistant surgeon of the Navy on duty at the Army and Navy General Hospital at Hot Springs, Ark., though the second officer in rank at that post, could not legally sit as a summary court under the act of 1890, which authorizes only an officer of the Army to officiate as such. (*Ibid.*, par. 5.)

The surgeon of the Army commanding the Army and Navy General Hospital at Hot Springs, Ark., has a mixed command, consisting of "different corps" in the sense of article 82, and would be authorized to convene garrison courts if, in view of the provisions of the summary court act, there could be summary courts legally ordered at that post. But no summary court can be ordered at such post unless there is on duty there a line officer who is also second in rank of the officers there stationed. If the second in rank on duty there is a medical officer, and there be also on duty a line officer or line officers, there can be no summary court legally convened at the post. Such a court convened by such surgeon would not be a legal court because the station would not be one where "only officers of the staff are on duty." Where a summary court can not legally be ordered, a garrison court can not be resorted to. (*Ibid.*, par. 6.)

Where the officer second in relative rank at an ordnance post is an ordnance storekeeper, he should act as the summary court. If, in the absence of the regular post commander, he becomes post commander, and there is no other officer of inferior rank at the post, the storekeeper will legally act as the court. (*Ibid.*, 726, par. 7.)

The provision of the act that accused soldiers shall be brought before the summary court for trial "within twenty-four hours from the time of their arrest" is not a statute of limitations nor jurisdictional in its character, but directory only—directory upon the officers whose duty it is to bring offenders before the court. The proceedings will thus be legally valid though the accused does not appear for trial within the period specified. So *held*, in a case of an accused soldier arrested on Saturday, that the court did not, by not sitting on Sunday, lose jurisdiction; and therefore that it is not necessary that a summary court should ever sit on a Sunday. (b) (*Ibid.*, par. 10.)

The provision in the act in regard to the trial being had within twenty-four hours of the arrest being directory only, a trial held after that time is entirely valid. Thus, where a soldier, by reason of drunkenness or otherwise, is not in a condition to be tried within that time, his trial may be postponed till he is in such condition. (*Ibid.*, 727, par. 11.)

*Held* that the provision of the ninety-fourth article of war relating to the hours of session of courts-martial was not applicable to summary courts. (*Ibid.*, par. 12.)

The procedure of the summary court should be similar to that of the older courts-martial. The charges and specifications should be read to the accused, and he be required to plead guilty or not guilty, and the witnesses should be sworn. But the testimony is not set forth in the record. (c) (*Ibid.*, par. 13.)

The act of 1890, in providing that the trial officer "shall have power to administer oaths," has reference to the oaths of witnesses. The officer himself is not sworn. But the witnesses must be sworn; and, in a case in which it appeared that they were not in fact sworn, *held* that the proceedings and sentence were invalidated, and that a forfeiture imposed was illegally charged against the accused, who should be credited with the amount of the same on the next muster and pay roll. But the record need not state in terms that the witnesses were sworn; it will be presumed that the law has been complied with unless the contrary appears. (*Ibid.*, par. 14.)

A summary court is not empowered to issue process of attachment to compel the attendance of a civilian witness. (*Ibid.*, par. 15.)

For a summary court to impose a forfeiture of \$10, when the soldier is receiving

a Published in G. O. 47 of 1894.

b See circular No. 2 (H. Q. A.), 1891; do. of 1892.

c As to the procedure and form of record of summary courts, see G. O. 47 of 1894; also circular No. 9 (H. Q. A.), 1894. See also the *Manual for Courts-Martial*, pp. 26, 75-80, 109, 131, and 132.

**1330.** That the commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same. *Sec. 5, act of July 27, 1892 (27 Stat. L., 277).* Power to remit or mitigate sentences. Sec. 5, July 27, 1892, v. 27, p. 277.

**1331.** That when but one commissioned officer is present with a command he shall hear and finally determine such cases as require summary action. *Act of October 1, 1890 (26 Stat. L., 648).* Trials by commanding officer.

**1332.** That any enlisted man charged with an offense and brought before such summary court may, if he so desires, object to a hearing and determination of his case by such court and request a trial by court-martial, which request shall be granted as of right, and when the court is the accuser the case shall be heard and determined by the post-commander, or by regimental or garrison court-martial. *Ibid.* Enlisted man may request court-martial. *Ibid.*

**1333.** That post and other commanders shall, on the last day of each month, make a report to the department headquarters of the number of cases determined by summary court during the month, setting forth the offenses committed and the penalties awarded, which reports shall be filed in the office of the judge-advocate of the department. *Ibid.* Report of cases tried, etc. *Ibid.*

#### LIMIT OF PUNISHMENT.

**1334.** That whenever by any of the Articles of War for the government of the Army the punishment on conviction of any military offense is left to the discretion of the court-martial the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.<sup>1</sup> *Act of September 27, 1890 (26 Stat. L., 491).* President to prescribe limit of punishment. Sept. 27, 1890, v. 26, p. 491.

That the President be, and he hereby is, authorized to prescribe specific penalties for such minor offenses as are now brought before garrison and regimental courts-martial. *Act of October 1, 1890 (26 Stat. L., 648).* President to prescribe specific penalties for minor offenses. Oct. 1, 1890, v. 26, p. 648.

only \$9 a month because of the retention of \$4 under the act of June 16, 1890, is not in excess of authority. The true monthly pay is \$13. The retention does not affect the amount of the pay, but simply the time of payment. (*Ibid.*, par. 17.)

A summary court is not empowered to impose a sentence of dishonorable discharge. Such punishment is not in terms authorized by article 83 to be adjudged by regimental or garrison courts, and it is impliedly restricted to general courts by the fourth article of war. (*Ibid.*, 728, par. 19.)

By the act of July 27, 1892 (chap. 272, sec. 5), "commanding officers authorized to approve the sentences of summary courts" are empowered to "remit or mitigate the same." *Held* that where a soldier, who had been convicted by a summary court, had passed into another command, so that the officer who approved his sentence was no longer his commanding officer, such officer could not legally exercise the power of remission or mitigation of the sentence. (*Ibid.*, par. 20.)

<sup>1</sup>Under the authority conferred by this statute, two Executive orders have been issued prescribing limits of punishment for offenses to which specific penalties are not attached in the Articles of War. See General Order No. 21, A. G. O. of 1891, as amended by the Executive order of March 20, 1895 (*MANUAL FOR COURTS-MARTIAL*, pp. 53-63).

## TWICE IN JEOPARDY.

No person tried  
twice for same,  
etc.

102 Art. War.

**1335.** No person shall be tried a second time for the same offense.<sup>1</sup> *One hundred and second Article of War.*

<sup>1</sup> The Constitution (Article V of the amendments) declares that "no person shall be subjected, for the same offense, to be twice put in jeopardy of life or limb." The United States courts, in treating the term "put in jeopardy," as meaning practically tried, hold that the "jeopardy" indicated "can be interpreted to mean nothing short of the acquittal or conviction of the prisoner and the judgment of the court thereon." (a) So, held that the term "tried," employed in this article, meant duly prosecuted, before a court-martial, to a final conviction or acquittal; and, therefore, that an officer or soldier, after having been duly convicted or acquitted by such a court, could not be subjected to a second military trial for the same offense except by and upon his own waiver and consent. For, that the accused may waive objection to a second trial was held by Attorney-General Wirt in 1818, (b) and has since been regarded as settled law. (Dig. Opin. J. A. Gen., 118, par. 1.)

Where an officer or soldier has been duly acquitted or convicted of a specific offense he can not, against his consent, be brought to trial for a minor offense included therein, and an acquittal or conviction of which was necessarily involved in the finding upon the original charge. Thus, a party convicted or acquitted of a desertion can not afterwards be brought to trial for an absence without leave committed in and by the same act. (Ibid., par. 2.)

Held that there was no "second" trial, in the sense of the article, in the following cases, viz: Where the party, after being arraigned or tried before a court which was illegally constituted or composed, or was without jurisdiction, was again brought to trial before a competent tribunal; where the accused, having been arraigned upon and having pleaded to certain charges, was rearraigned upon a new set of charges substituted for the others, which were withdrawn; where one of several distinct charges upon which the accused had been arraigned was withdrawn pending the trial, and the accused, after a trial and finding by the court upon the other charges, was brought to trial anew upon the charge thus withdrawn; where, after proceedings commenced, but discontinued without a finding, the accused was brought to trial anew upon the same charge; where, after having been acquitted or convicted upon a certain charge which did not in fact state the real offense committed, the accused was brought to trial for the same act, but upon a charge setting forth the true offense; where the accused was brought to trial after having had his case fully investigated by a different court, which, however, failed to agree in a finding and was consequently dissolved; (c) where the first court was dissolved because reduced below five members by the casualties of the service pending the trial; where, for any cause, there was a "mistrial," or the trial first entered upon was terminated, or the court dissolved, at any stage of the proceedings before a final acquittal or conviction. (Ibid., par. 3.)

Where an officer or soldier, having been acquitted or convicted of a criminal offense by a civil court, is brought to trial by a court-martial for a military offense involved in his criminal act, he can not plead "a former trial," in the sense of this article. So, where the trial for the military offense has preceded, he can not plead *autrefois acquit* or *convict* to an indictment for the civil crime committed in and by the same act. (d) (Ibid., 119, par. 4.)

Where the accused has been once duly convicted or acquitted, he has been "tried" in the sense of the article, and can not be tried again against his will, though no action whatever be taken upon the proceedings by the reviewing authority, or though the proceedings, findings (and sentence, if any,) be wholly disapproved by him. (e) It is immaterial whether the former conviction or acquittal is approved or disapproved. (Ibid., par. 5.)

That an accused has been, in the opinion of the reviewing authority, inadequately sentenced, either by a general or an inferior court, can not except his case from the application of this article; though insufficiently punished, he can not be tried again for the same offense. (Ibid., 120, par. 6.)

Where an officer, who had killed a superior officer in an altercation at a military post, was brought to trial before a civil court on a charge of murder and acquitted, and was subsequently arraigned before a court martial for the offense against military discipline involved in his criminal act, held that a plea of former trial interposed by him was properly overruled by the court. (Ibid., par. 7.)

A soldier was convicted of "manslaughter," but the findings and sentence were disapproved. He was then brought to trial on a charge of mutiny, as committed on the occasion of the homicide, the latter being alluded to in the specification as an incidental circumstance of aggravation, and was found guilty and sentenced. Held that the accused was not, in the sense of this article, "tried a second time for the same offense," the mutiny not consisting in the act of homicide, but constituting a distinct offense. (Ibid., par. 8.)

There can not, in view of this article, be a second trial where the offense is really the same, though it may be charged under a different description and under a different article of war. Thus, where the Government elects to try a soldier under the thirty-second article for "absence without leave," or under the forty-second for "lying out of quarters," and the testimony introduced develops the fact that the offense was desertion, the accused, after an acquittal or conviction, can not legally be brought a second time to trial for the same absence charged as a desertion. (Ibid., par. 9.)

a U. S. v. Haskell, 4 Wash. C. C., 409. And see U. S. v. Shoemaker, 2 McLean, 114; U. S. v. Gilbert, 2 Sumner, 19; U. S. v. Perez, 9 Wheaton, 579; 1 Opin. Att. Gen., 294.

b 1 Opin. Att. Gen., 233. And see also 6 ibid., 205.

c See U. S. v. Perez, 9 Wheat., 579.

d See 6 Opin. Att. Gen., 413, 506.

e Compare Macomb, section 159; O'Brien, 277; Rules for Bombay Army, 45.

## STATUTES OF LIMITATION.

**1336.** No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.<sup>1</sup> *One hundred and third Article of War.*

Limitation on  
time of prosecution.  
103 Art. War.

<sup>1</sup> The statute of limitation (103d A. W.) is not prohibitory as to jurisdiction, but properly a matter of *defense*, which to become effective should be pleaded and proved. By pleading to the general issue the accused waives his right to *plead* the limitation, but the limitation may still be taken advantage of by *evidence* showing that it has taken effect. See MANUAL FOR COURTS-MARTIAL, p. 32.

The mere fact that the offense was concealed by the accused and remained unknown to the military authorities for more than two years constitutes no "impediment" in the sense of the article. (Dig. Opin. J. A. Gen., 123, par. 5.)

It is quite clear that any person who takes himself out of the jurisdiction, with the intention of avoiding being brought to justice for a particular offense, can have no benefit of the limitation, at least when prosecuted for that offense in a court of the United States. \* \* \* A person fleeing from the justice of his country is not supposed to have in mind the object of avoiding the process of a particular court, or the question whether he is amenable to the justice of the nation or of the State, or of both. Proof of a specific intent to avoid either could seldom be had, and to make it an essential requisite would defeat the whole object of the provision in question. *Streep v. United States*, 160 U. S., 128, *United States v. Smith*, 4 Day, 121, 125; *Roberts v. Reilly*, 116 U. S., 80, 97.

A mere allegation in a specification to the effect that the whereabouts of the offender was unknown to the military authorities during the interval of more than two years which had elapsed since the offense is not a good averment of a "manifest impediment" in the sense of the article. (Dig. Opin. J. A. Gen., par. 6.)

By the absence referred to in the original article, in the term "unless by reason of having absented himself," is believed to be intended not necessarily an absence from the United States, but an absence by reason of a "fleeing from justice," analogous to that specified in section 1045, Revised Statutes, which has been held to mean leaving one's home, residence, or known abode within the district, or concealing one's self therein, with intent to avoid detection or punishment for the offense against the United States. (a) Thus held that, in a case other than desertion, it was not essential for the prosecution to be prepared to prove that the accused had been beyond the territorial jurisdiction of the United States in order to save the case from the operation of the limitation. (Ibid., p. 125, par. 14.)

A court-martial, in a case of an offense other than desertion, sustained a plea of the statute of limitations in bar of trial for the reason that the judge-advocate could produce no evidence to show that the accused was not within the territorial jurisdiction of the United States during his absence. Held that such showing was not necessary, and that it was sufficient that the absence should be any unauthorized absence from the military service whereby the absentee evades and for the time escapes trial. This construction of the term "absented himself" in the article corresponds to that placed on the words "fleeing from justice," as used in the statutes of the United States to designate those whom the statutes of limitation for the prosecution of crimes do not protect. (Ibid., par. 15.)

The liability to trial after discharge, imposed by the last clause of article 60, held subject to the limitation prescribed in article 103. (b) And so held as to the liability to trial after the expiration of the term of enlistment, under article 48. (c) (Ibid., p. 124, par. 9.)

The prohibition of the article relates only to prosecutions before general courts-martial; it does not apply to trials by inferior courts. So, courts of inquiry may be convened without regard to the period which has elapsed since the date or dates of the act or acts to be investigated. (d) Nor does the rule of limitation apply to the hearing of complaints by regimental courts under article 30. (Ibid., par. 10.)

In view of this article it is the duty of the Government to prosecute an offender within a reasonable time after the commission of the offense. (Ibid., par. 11.)

The limitation is properly a matter of *defense*, to be specially pleaded and proved. (e) By pleading the general issue the accused is assumed to waive the right to plead the limitation by a special plea in bar; but under a plea of "not guilty" the limitation may be taken advantage of by *evidence* showing that it has taken effect. (Ibid., par. 12.)

<sup>a</sup> U. S. v. O'Brien, 2 Dillon, 381; U. S. v. White, 5 Cranch C. C., 38, 73; Gould & Tucker, Notes on Revised Statutes, 349.

<sup>b</sup> 14 Opins. Att. Gen., 52.

<sup>c</sup> See, to a similar effect, 13 Opins. Att. Gen., 462; 15 *ibid.*, 152; 16 *ibid.*, 170; also *In re Bird*, 2 Sawyer, 33.

<sup>d</sup> See 6 Opins. Att. Gen., 239.

<sup>e</sup> *In re Bogart*, 2 Sawyer, 397; *In re White*, 17 Fed. Rep., 723; *In re Davison*, 21 *ibid.*, 618; *In re Zimmerman*, 30 *ibid.*, 176; G. O. 22 of 1893. And compare U. S. v. Cooke, 17 Wallace, 168.

Limitation on  
prosecutions for  
desertion in time  
of peace.  
Apr. 11, 1890, v.  
26, p. 54.

**1337.** No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service. *Act of April 11, 1890 (26 Stat. L., 54).*

#### COURTS OF INQUIRY.

Courts of in-  
quiry.  
115 Art. War.

**1338.** A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.<sup>1</sup> *One hundred and fifteenth Article of War.*

Composition.  
116 Art. War.

**1339.** A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the

<sup>1</sup> This article authorizes the institution of a court of inquiry (a) only in a case of an "officer or soldier," and the word "officer," as employed in the articles, is defined, by section 1342, Revised Statutes, to mean commissioned officer. A court of inquiry can not, therefore, be convened on the application or in a case of a person who is not an officer (or soldier) of the Army at the time. Such a court can not be ordered to investigate transactions of or charges against a party who, by dismissal, discharge, resignation, etc., has become separated from the military service, although such transactions or charges relate altogether to his acts or conduct while in the Army. A court of inquiry can not be ordered in a case of an "acting assistant surgeon," who is not an officer of the Army, but only a civil employee. (Dig. Opin. J. A. Gen., 135, par. 1.)

A court of inquiry should not in general be ordered by an inferior—post or regimental—commander where the charges required to be investigated are not such as an inferior court-martial could legally take cognizance of. Courts of inquiry convened by such commanders are, however, of rare occurrence in our service. (Ibid., 136, par. 2.)

Though a court of inquiry has sometimes been compared to a grand jury, there is little substantial resemblance between the two bodies. The accused appears and examines witnesses before such a court as freely as before a court-martial, (see article 118), and its proceedings are not required to be secret, but may be open at the discretion of the court. (Ibid., par. 3.)

Although neither article 88 nor other provision of the code specifically authorizes the challenging of the members of a court of inquiry, yet, in the interests of justice and by the usage of the service in this country, this proceeding is permitted in the same manner as before courts-martial. Article 117 requires that members of courts of inquiry shall be sworn "well and truly to examine and inquire, according to the evidence, without partiality, prejudice," etc.; and it is the sense of the service that

a A court of inquiry is not a court in the legal sense of the term, but rather a council, commission, or board of investigation. It does not administer justice; no plea or specific issue is presented to it for trial; its proceedings are not a trial of guilt or innocence; it does not come to a verdict or pass a sentence. For purposes of investigation, however, a court of inquiry in this country is clothed with ample powers, and, in an important case, its opinions may be scarcely less significant and even final than that of a military court proper, that is to say, a court-martial. (1 Winthrop's Military Law and Precedents, chapter 24.)



proceedings and evidence to writing. *One hundred and sixteenth Article of War.*

1340. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: so help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: so help you God." *One hundred and seventeenth Article of War.*

Oaths of members and recorder.  
117 Art. War.

1341. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts martials, <sup>(1)</sup> and the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question. *One hundred and eighteenth Article of War.*

Power to summon and examine witnesses.  
Mar. 3, 1863, c. 75, s. 27, v. 12, p. 736; Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754.  
118 Art. War.

1342. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.<sup>2</sup> *One hundred and nineteenth Article of War.*

Opinion; when given.  
119 Art. War.

their competency so to do should be liable to be tried by the same tests as in a case of a court-martial. (a) (Ibid., par. 4.)

A court of inquiry has no power to punish as for a contempt. Such power of this nature as is conferred by article 86 is restricted in terms to courts-martial. Moreover, a court of inquiry, not being in a proper sense a court, can not exercise the strictly judicial function of punishing contempts. (b) (Ibid., 137, par. 5.)

<sup>1</sup> So in the roll.

<sup>2</sup> An opinion given by a court of inquiry is not in the nature of a sentence or adjudication pronounced upon a trial. The accused, upon a subsequent trial by court-martial, of charges investigated by a court of inquiry, can not plead the proceedings or opinion of the latter as a former trial, acquittal, or conviction. (Dig. Opin. J. A. Gen., 137, par. 1.)

While it is of course desirable that the members of a court of inquiry, directed to express an opinion, should concur in their conclusions, they are not required to do so by law or regulation. (c) The majority does not govern the minority, as in the case of a finding or sentence by court-martial. If a member or a minority of members can not conscientiously, and without a weak yielding of independent convictions, agree with the majority, it is better that such member or members should formally disagree and present a separate report or reports accordingly. The very

a See Macomb, sec. 204; O'Brien, 292; De Hart, 278. In the joint resolution of Congress of February 13, 1874, authorizing the President to convene a certain special court of inquiry, it was "provided that the accused may be allowed the same right of challenge as allowed by law in trials by court-martial." It appears, however, to have been regarded in the debate on this resolution (see Congressional Record, vol. 2, Nos. 38, 40) that this provision was unnecessary to entitle the party to the privilege.

b A loose observation of Hough (Authorities, 10) that "contempts before courts of inquiry are as much punishable as before courts-martial" has been carelessly repeated by several American writers. The recent English writer, Clode, correctly states the law (as to witnesses) in saying (Mil. and Mar. Law, 198) that a court of inquiry "has no power to punish them for contumacy or silence."

c In the case of the court of inquiry (composed of seven general officers) on the Cintra Convention, in 1808, the members who dissented from the majority were required by the convening authority to put on record their opinions, and three dissenting opinions were accordingly given. A further instance, in which two of the five members of the court gave each a separate dissenting opinion, is cited by Hough (Precedents, 642). Mainly upon the authority of the former case, both Hough (Precedents, 642) and Simmons (sec. 339) hold that members nonconcurring with the majority are entitled to have their opinions reported in the record.



Authentic-  
ation of proceed-  
ings.

120 Art. War.

1343. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer. *One hundred and twentieth Article of War.*

Proceedings,  
when used as ev-  
idence.

121 Art. War.

1344. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer. *Provided*, That the circumstances are such that oral testimony can not be obtained.<sup>1</sup> *One hundred and twenty-first Article of War.*

#### EVIDENCE.

Evidence to be  
given under oath.

92 Art. War.

1345. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."<sup>2</sup> *Ninety-second Article of War.*

disagreement, indeed, of intelligent minds is a material and important fact in the case, and one of which the reviewing authority is entitled to have the advantage in his consideration of and action upon the same. (*Ibid.*, par. 2.)

Where, as in the majority of cases, the inquiry is instituted with a view of assisting the determination by the President, or a military commander, of the question whether the party should be brought to trial, the opinion of the court will properly be as to whether further proceedings before a court-martial are called for in the case, with the reasons for the conclusions reached. Where no such view enters into the inquiry, but the court is convened to investigate a question of military right, responsibility, conduct, etc., the opinion will properly confine itself to the special question proposed and its legitimate military relations. A court of inquiry, composed as it is of military men, will rarely find itself called upon to express an opinion upon questions of a purely legal character. (a) (*Dig. Opin. J. A. Gen.*, 138, par. 3.)

It is not irregular, but authorized, for a court of inquiry, in a proper case, to reflect, in connection with its opinion, upon any improper language or conduct of the accused, prosecuting witness, or other person appearing before it during the investigation. (b) (*Ibid.*, par. 4.)

<sup>1</sup> While the proceedings of a court of inquiry can not be admitted as evidence on the merits upon a trial before a court-martial of an offense for which the sentence of dismissal will be mandatory upon conviction, (c) yet *held* that upon the trial of such offense, as upon any other, such proceedings, properly authenticated, would be admissible in evidence for the purpose of impeaching the statements of a witness upon the trial who—it was proposed to show—had made quite different statements upon the hearing before the court of inquiry. (d) *Ibid.*, 139.

<sup>2</sup> *Oath.*—This article prescribes a single specific form of oath to be taken by all witnesses. The Constitution, however (article 1 of amendments), has provided that Congress shall make no law prohibiting the free exercise of religion. Where, therefore, the prescribed form is not in accordance with the religious tenets of a witness, he should be permitted to be sworn according to the ceremonies of his own faith or as he may deem binding on his conscience. (e) (*Dig. Opin. J. A. Gen.*, 107, par. 1.)

The article does not prescribe by whom the oath shall be administered. By the custom of the service it is administered by the judge-advocate. (And see, now, the provision of the act of July 27, 1892, sec. 4.) When the judge-advocate himself takes the witness stand, he is properly sworn by the president of the court. (*Ibid.*, 108, par. 2.)

A witness who has once been sworn and has testified is not required to be resworn on being subsequently recalled to the stand by either party. The reswearing, how-

a In an exceptional case, that of the special court of inquiry authorized by Congress in the joint resolution of February 13, 1874, the court was required to express an opinion not only upon the "moral" but upon the "technical and legal responsibility" of the officer for the "offenses" charged.

b Thus the court of inquiry on the conduct of the Seminole war adverted, in its opinion, unfavorably upon certain offensive and reprehensible language employed against each other by the two general officers concerned, the one in his statement to the court and the other in his official communications which were put in evidence. (See G. O. 13, Headquarters of Army, 1837.)

c Compare G. O. 33, Department of Arizona, 1871.

d See this ruling, published, as adopted by the President, in G. C. M. O. 40, Headquarters of Army, 1880.

e See 1 General Evidence, sec. 371; O'Brien, 260.

## TESTIMONY OF ACCUSED PERSONS.

1346. That in the trial of all indictments, informations, complaints, and other proceedings against persons charged with the commission of crimes, offenses, and misdemeanors,

Accused persons may testify.  
Mar. 16, 1878, v. 20, p. 30.

ever, of such a witness will not affect the legal validity of the proceedings or sentence. (*Ibid.*, par. 3.)

## COMPETENCY OF WITNESSES.

The rules governing the competency of witnesses before the criminal courts of the United States and the States are where apposite, generally (though not always necessarily, followed in the practice of courts martial. (*a*) (*Ibid.*, 749 par. 1.) See also *MANUAL FOR COURTS MARTIAL* p. 40

The law by which, in the opinion of this court, the admissibility of testimony in criminal cases must be determined is the law of the State as it was when the courts of the United States were established by the judiciary act of 1789. The courts of the United States have uniformly acted upon this construction of these acts of Congress, and it has thus been sanctioned by a practice of sixty years. (*U. S. v. Reid*, 12 How., 361, 363, 366; *Logan v. U. S.*, 144 U. S., 263, 301.)

## MISCELLANEOUS PROVISIONS.

A witness who has given his testimony should in general be allowed to modify the same where he desires to do so in a material particular. But where the court has refused to permit a witness to correct his statement as recorded, such refusal need not induce a disapproval of the proceedings unless it appear that the rights of the accused have thus been prejudiced. (*Dig. Opin. J. A. Gen.*, 753, par. 14.)

Witnesses should not in general be admitted to the court room, but should be kept as far as practicable apart, until required to appear and give their testimony. But that a witness or witnesses may have been permitted to remain in the court room and hear the testimony of witnesses previously called can not affect the legality of the proceedings. (*Ibid.*, par. 15.)

A witness can have no authority to discharge or relieve himself from attendance on the ground that the testimony desired of him is immaterial or for any other reason. In the civil practice such an act would be a grave contempt of court. It is for the court to judge as to the materiality or pertinency of the evidence of witnesses, and unless a witness has been determined by the court to be incompetent or his testimony to be inadmissible, he should remain and stand his examination till informed by the court or judge-advocate that his attendance is no longer required in the case. (*Ibid.*, par. 16.) See also, in this connection, *MANUAL FOR COURTS-MARTIAL*, pp. 40-47.

## FEES.

For provisions of regulations in respect to fees of civilian witnesses in the employ of the Government, see paragraphs 962, 964, and 965, Army Regulations of 1895; for similar provisions in respect to civilian witnesses who are not in Government employ, see paragraphs 963, 964, and 965, Army Regulations of 1895. See also, *MANUAL FOR COURTS-MARTIAL*, pp. 38-39, 142, 143.

In view of the provision of section 1248, Revised Statutes, investing retiring boards with such powers of courts-martial as may be necessary to enable them to inquire into and determine the facts touching the disability of officers whose cases are referred to them, *held* that a retiring board might legally cause material witnesses to be summoned to attend its sessions, and that witnesses so summoned would probably be entitled to the fees of witnesses before courts-martial. (*Dig. Opin. J. A. G.*, 756, par. 25.)

*Held* that parties who appeared and testified before, and at the instance of, an officer charged with the preliminary investigation of a case, but were not required to attend at a subsequent trial, were not legally entitled to witness fees. (*Ibid.*, 757, par. 26.)

The compensation allowed by the Secretary of War for witnesses summoned as experts in handwriting before a court-martial (see *Smith v. U. S.*, 24 C. Cls. R., 209) *held* payable out of the annual appropriation "for compensation of witnesses attending upon courts-martial and courts of inquiry." (*Ibid.*, 759, par. 35.)

*Held* that duly attending by a civilian witness before a duly authorized official to give a deposition, to be used in evidence on a military trial, was to be regarded as practically equivalent to attending a court-martial, and that the deponent was entitled to be paid the usual allowances (i. e., the same as those of witnesses appearing before the court,) out of the regular appropriation for the "compensation of witnesses attending before courts-martial," etc. (*Ibid.*, par. 36.)

*Held* that the annual appropriation by Congress for the compensation of witnesses attending before courts-martial was evidently based upon the understanding that such compensation, not being prescribed by statute, was one left to be fixed by the Secretary of War (the authority charged with the expenditure of the appropriation), and was, indeed, that which had been so fixed and published in Army Regulations. Thus the appropriation, made as it is from year to year, is to be regarded as made in knowledge and recognition of the rates of compensation as established by such regulations. Section 848, Revised Statutes, prescribing witness fees, and

<sup>a</sup> In the British service, until the year 1805, oaths were only administered to witnesses before general courts-martial. In that year, but against the advice of many general officers (including the Duke of Wellington), the provisions of the article were extended in this respect to the minor courts. (*Clode, Mil. Law*, 126.)

in the United States courts, Territorial courts, and courts-martial, and courts of inquiry, in any State or Territory, including the District of Columbia, the person so charged shall, at his own request but not otherwise, be a competent witness. And his failure to make such request shall not create any presumption against him.<sup>1</sup> *Act of March 16, 1878 (20 Stat. L., 30).*

constituting a part of the chapter entitled "The Judiciary," has reference to such fees in the Federal civil courts only, and has no application whatever to courts-martial, which are no part of the judiciary of the United States. (*Ibid.*, par. 37.)

Neither the appropriation "for the compensation of witnesses attending civil courts," nor the appropriation for the contingent expenses of the Army, is applicable to the payment of allowances, as witnesses before civil courts, of officers or soldiers of the Army or of civil employees of the military establishment. For such allowances they must look to the laws and appropriations fixing and authorizing the payment of witness fees in these courts. (See paragraph 960, Army Regulations of 1895.) *Ibid.*, 760, par. 38.

#### CRIMINATING QUESTIONS.

The privilege, recognized by the common law, of a witness to refuse to respond to a question the answer to which may criminate him, is a personal one, which the witness may exercise or waive as he may see fit. It is not for the judge-advocate or accused to object to the question or to check the witness, or the court to exclude the question or direct the witness not to answer. Where, however, he is ignorant of his right, the court may properly advise him of the same. But where a witness declines to answer a question on the ground that it is of such a character that the answer thereto may criminate him, but the court decides that the question is not one of this nature and that it must be answered, the witness can not properly further refuse to respond, and, if he does so, will render himself liable to charges and trial under article 62. (*Dig. Opin. J. A. Gen.*, 754, par. 17.)

It is not sufficient to excuse the witness from testifying that he may, in his own mind, think his answer to the question might, by possibility, lead to a criminal charge against him, or tend to convict him of it if made. The court must be able to perceive that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. *U. S. v. McCarty*, 18 F. R., 87.

Upon a trial of a cadet of the Military Academy, the court (against the objection of the accused) required another cadet, introduced as a witness for the prosecution, to testify as to facts which would tend to criminate him. *Held* that such action was erroneous, the not answering in such cases being a privilege of the witness only, who (whether or not objection were made) could refuse to testify, and who, if ignorant of his rights, should be instructed therein by the court. (*Dig. Opin. J. A. Gen.*, 400, par. 27.)

At a trial of a cadet of the Military Academy, the accused, while on the stand as a witness, was advised by the court that while it was his privilege to refuse to answer any question that might tend to criminate him, yet the court would "put its own interpretation" on the fact of his refusing. *Held* a grave error, which might well induce the disapproval of the finding and sentence adjudged. (*Ibid.*, par. 28.)

In the case of *Tucker v. United States* (151 U. S., 164, 168) the Supreme Court of the United States has placed an interpretation upon certain clauses of section 860, Revised Statutes. That section contains the requirement that "no pleading of a party, nor any discovery or evidence obtained from a party or witness by means of a judicial proceeding in this or any foreign country, shall be given in evidence, or in any manner used against him or his property or estate, in any court of the United States, in any criminal proceeding, or for the enforcement of any penalty or forfeiture: *Provided*, That this section shall not exempt any party or witness from prosecution and punishment for perjury committed in discovering or testifying as aforesaid." In its decision the court held that "pleadings of parties" are the allegations made by the parties to a civil or criminal case for the purpose of definitely presenting the issue to be tried and determined between them. "Discovery or evidence obtained from a witness by means of a judicial proceeding" includes only facts or papers which the party or witness is compelled by subpoena, interrogatory, or other judicial process to disclose, whether he will or no, and is inapplicable to testimony voluntarily given or to documents voluntarily produced. The clause as to discovery or evidence is conceived in the same spirit as the fifth amendment of the Constitution, declaring that "no person shall be compelled in any criminal case to be a witness against himself," and as the act of March 16, 1878 (20 Stat. L., 30), enacted that a defendant in any criminal case may be a witness at his own request, but not otherwise, and that his failure to make such request shall not create any presumption against him. *Tucker v. U. S.*, 151 U. S., 164, 168; *Boyd v. U. S.*, 116 U. S., 616; *Wilson v. U. S.*, 149 U. S., 60; *Lees v. U. S.*, 150 U. S., 476. No statute which (like section 860, R. S.) leaves the party or witness subject to prosecution, after he answers the criminating question put to him, can have the effect of supplanting the privilege conferred by the Constitution. *Counselman v. Hitchcock*, 142 U. S., 547.

The immediate object of the legislation of February 25, 1868, from which section 860, R. S., is taken, was to protect against certain forfeitures agents of the Confederate States whose testimony in regard to assets of the Confederacy it was desired to obtain abroad. (Congressional Globe, 2d sess., 40th Cong., part 2, p. 1334.)

<sup>1</sup> The act of March 16, 1878 (20 Stat. L., 30), having provided that a person charged with the commission of a crime may, at his own request, be a competent witness in the trial, but that "his failure to make such request shall not create any presumption against him," all comment upon such failure must be excluded from the jury. *Wilson v. U. S.*, 149 U. S., 60. Such failure to testify is not to create a presumption of

## DOCUMENTARY EVIDENCE.

### 1347. Copies of any books, records, papers, or documents in any of the Executive Departments, authenticated under

Copies of Department records and papers.

guilt. *U. S. v. Pendergrast*, 32 Fed. Rep., 198. When such an accused person elects to testify in his own behalf, his testimony may be impeached. *U. S. v. Brown*, 40 Fed. Rep., 437.

An accused person can not testify in his own behalf if incompetent to testify as a witness for any cause. *U. S. v. Hollis*, 43 Fed. Rep., 248.

Pardon restores competency to testify. *Logan v. U. S.*, 144 U. S., 263; *Boyd v. U. S.*, 142 U. S., 450.

If he waives his privilege as to one act, he does so fully in relation to that act. But he does not thereby waive his privilege of refusing to reveal other acts, wholly unconnected with the act of which he has spoken, even though they be material to the issue. *Low v. Mitchell*, 18 Me., 372; *Tillson v. Bowley*, 8 Greenl., 163.

Where a witness has voluntarily answered as to material criminating facts, it is held with uniformity that he can not then stop short and refuse further explanation, but must disclose fully what he has attempted to relate. This view is adopted by the text-writers, and is very well explained in several of the authorities, where the principle is laid down and enforced. 1 Starkie Evid. (9th Am. ed.); Roscoe's Crim. Ev., 174; 1 Greenl., sec. 451; 2 Phill. Ev., 935; 2 Russ. Cr., 931; *Coburn v. Odell*, 10 Foster, 540; *State v. K.*, 4 N. H., 562; *State v. Foster*, 3 Foster, 348; *Foster v. Pierce*, 11 Cush., 437; *Brown v. Brown*, 5 Mass., 320; *Amherst v. Hollis*, 9 N. H., 107; *Low v. Mitchell*, 18 Me., 372; *Chamberlain v. Willson*, 12 Vt., 491; *People v. Lohmann*, 2 Barb. S. C., 216; *Norfolk v. Gaylord*, 28 Conn., 309.

The testimony of an accused party is competent only when presented as authorized by the act of March 16, 1878, chapter 37, viz, when the party himself requests to be admitted to testify. But such testimony is not excepted from the ordinary rules governing the admissibility of evidence, nor from the application of the usual tests of cross-examination, rebuttal, etc. (Dig. Opin. J. A. Gen., p. 398, par. 14.) See, also, *MANUAL FOR COURTS-MARTIAL*, p. 40, par. 2.

It was heretofore an established rule that accused parties could not legally testify as witnesses before military courts. (a) But now, by the act of March 16, 1878, chapter 37, it is expressly provided that at trials, not only before the courts of the United States, but before courts martial and courts of inquiry, "the person charged shall, at his own request, but not otherwise, be a competent witness." It is added: "And his failure to make such request shall not create any presumption against him." But parties testifying under this act have no exceptional status or privileges; they must take the stand and be subject to cross-examination like other witnesses. The submission by the accused of a sworn written statement is not a legitimate exercise of the authority to testify conferred by the statute, and such a statement should not be admitted in evidence by the court. (b) (*Ibid.*, 749, par. 2.)

## COMPETENCY OF WITNESSES.

A wife is not a competent witness for or against a person accused of crime, on his trial. Comment on her absence by the district attorney held to be reversible error. *Graves v. U. S.*, 150 U. S., 118; *U. S. v. Jones*, 32 Fed. Rep., 569.

It has been uniformly held that the wife of a person on trial before a court-martial could not properly be admitted as a witness for or against him; (c) and the statute authorizing accused parties to testify does not affect this rule. The wife, however, of an officer or soldier may be admitted to testify in his case before a court of inquiry, the proceeding before such a body not being a trial, but an investigation merely. Where a court-martial refused to admit in evidence (as being incompetent) the testimony of the wife of the prosecuting witness, held that its action was entirely erroneous, no legal objection existing to the competency of such a person. (Dig. Opin. J. A. Gen., 750, par. 3.) See, also, *MANUAL FOR COURTS-MARTIAL*, p. 40, par. 3.

An insane person is no more competent as a witness before a court-martial than at common law. Testimony admitted of a person shown to be insane should be stricken out on motion made. (Dig. Opin. J. A. Gen., 399, par. 23.)

A person who is insane at the time is incompetent as a witness. An objection, however, to a witness on account of alleged insanity will not properly be allowed, unless sustained by clear proof, a man being always presumed to be sane till proven to be otherwise. (*Ibid.*, 751, par. 8.)

A wife is not a competent witness to prove a charge of failing to support her, for which her husband is on trial. (*Ibid.*, 399, par. 21.)

It is no objection to the competency of a witness that he is the officer upon whom will devolve the duty of reviewing authority when the proceedings are terminated. (*Ibid.*, 751, par. 6.)

It is no objection to the competency of a witness that his name is not on the list of witnesses appended to the charges when served. The prosecution is not obliged to furnish any list of witnesses, nor, where one is furnished, to confine itself to the

<sup>a</sup> See G. C. M. O. 3, H. Q. A., 1870, in which is incorporated an opinion of the Judge-Advocate-General on the subject.

<sup>b</sup> See the general orders cited in the note to "Evidence"—a co-conspirator is a competent witness upon the trial of an indictment for conspiracy. *U. S. v. Sacia*, 2 Fed. Rep., 754. The evidence of an accomplice, though uncorroborated, is to be considered for what it is worth. *U. S. v. Hemming*, 18 *ibid.*, 907.

<sup>c</sup> Nor will the testimony of the wife of an accused be admissible in favor of or against a party jointly charged with him, where her testimony will be material to the merits of the question of the guilt or innocence of her husband. See *Territory v. Paul*, 2 Montana, 314.

witnesses thus specified. The fact that material testimony is given by an unexpected witness may indeed constitute ground for an application by the accused (under article 93) for further time for the preparation of his defense. (*Ibid.*, par. 7.)

The fact that a party is a public enemy of the United States, or has engaged in giving aid to the enemy, does not affect the competency of his testimony as a witness before a court-martial. Where testifying, however, in time of war, either in favor of a person in the enemy's service or an ally of or sympathizer with the enemy, or against a Federal officer or soldier, his statements (like those of an accomplice) are ordinarily to be received with caution unless corroborated. The fact that a party is under a political disability is not one which goes to his competency if offered as a witness. So the fact that a witness has been convicted of desertion may impair his credibility, but can not affect his competency. (*Ibid.*, 397, par. 12.)

Desertion is not a felony and does not render a witness incompetent at common law or before a court-martial. Nor does the loss of citizenship upon conviction of desertion, under sections 1996 and 1998, Revised Statutes, have such effect, the competency of a witness not depending upon his citizenship. A pardon of a person thus convicted would not therefore add to his competency. But where it was proposed to introduce such a person as a material witness for the prosecution in an important case, *advised* that it would be desirable to remit the unexecuted portion of his sentence, if any. (*Ibid.*, 399, par. 24.)

Where a conviction (of rape) rested mainly on the testimony of the victim, a child of 8 years of age, *held* that the competency of the witness was doubtful, and that the trial should have been suspended and the child instructed. (*a*) Where a court-martial received the testimony of a female child of 3½ years without swearing her, *held*, that it had wholly exceeded its authority, unsworn testimony being entirely incompetent in any case. (*Ibid.*, 399, par. 22.)

The president or any member of a court-martial, as also the judge-advocate, may legally give testimony before the court. That the court, at the time of a member's testifying, is composed of but five members will not affect the validity of the proceedings, since in so testifying he does not cease to be a member. It is in general, however, most undesirable that the judge-advocate, and still more that a member, should appear in the capacity of a witness, except perhaps where the evidence to be given relates simply to the good character or record of the accused. (*Ibid.*, p. 750, par. 5.)

#### THE RULES OF EVIDENCE—MISCELLANEOUS PROVISIONS.

Courts-martial, in the absence of any specific statutory rules, are in general governed by the rules of evidence of the common law. (*Dig. Opin. J. A. Gen.*, 398, par. 16.)

Courts-martial should in general follow, so far as apposite to military cases, the rules of evidence observed by the civil courts, and especially the courts of the United States, in criminal cases. (*b*) They are not bound, however, by any statute in this particular, and it is thus open to them, in the interests of justice, to apply these rules with more indulgence than the civil courts—to allow, for example, more latitude in the introduction of testimony and in the examination and cross-examination of witnesses than is commonly permitted by the latter tribunals. In such particulars, as persons on trial by courts-martial are ordinarily not versed in legal science or practice, a liberal course should in general be pursued, and an over-technicality be avoided. (*c*) (*Ibid.*, 393, par. 1.)

The law by which the admissibility of testimony in criminal cases in the courts of the United States must be determined is the law of the State, as it was when these courts were established by the judiciary act of 1789. They have uniformly acted upon this construction of the judiciary act of 1789 and the crimes act of 1790, and it has thus been sanctioned by a practice of sixty years. *U. S. v. Reid*, 12 How., 361, 363, 366; *Logan v. U. S.*, 144 U. S., 263, 300.

*How applied.*—The rules of evidence should be applied by military courts irrespective of the rank of the person to be affected. Thus a witness for the prosecution, whatever be his rank or office, may always be asked, on cross-examination, whether he has not expressed animosity toward the accused, as well as whether he has not on a previous occasion made a statement contradictory to or materially different from that embraced in his testimony. Such questions are admissible by the established law of evidence, and imply no disrespect to the witness, nor can the witness properly decline to answer them on the ground that it is disrespectful to him thus to attempt to discredit him. (*d*) (*Ibid.*, par. 2.)

*Character.*—Evidence of the good character, record, and services of the accused as an officer or soldier is admissible in all military cases without distinction—in cases where the sentence is mandatory as well as those where it is discretionary, upon conviction. For, where such evidence can not avail to affect the measure of punishment, it may yet form the basis of a recommendation by the members of the court, or induce favorable action by the reviewing officer whose approval is necessary to the execution of the sentence. Where such evidence is introduced, the prosecution may offer counter testimony, but it is an established rule of evidence that the prosecution can not attack the character of the accused till the latter has introduced evidence to sustain it, and has thus put it in issue. (*Ibid.*, 394, par. 4.)

It is in general competent, on trials by court-martial, for the accused to put in evidence any facts going to extenuate the offense and reduce the punishment, as the fact that he has been held in arrest or confinement an unusual period before trial, the fact that he has already been subjected to punishment or special discipline

*a* 1 Greenleaf on Evidence, section 367.

*b* See 3 Greenl. Ev., sec. 476; *Lebanon v. Heath*, 47 N. Hamp., 359; *People v. Van Allen*, 55 N. York, 39; 2 Opin. Att. Gen., 343; *Grant v. Gould*, 2 H. Black., 87; 1 McArthur, 47; *Harcourt*, 76; *De Hart*, 334; *O'Brien*, 169; *G. O. 51*, Middle Department, 1865; *G. C. M. O. 60*, Department of Texas, 1879; *G. C. M. O. 3*, 52, Department of the East, 1880.

*c* Compare the views expressed in *G. C. M. O. 32*, War Department, 1872; *G. C. M. O. 23*, Department of Texas, 1873; *G. C. M. O. 60*, Department of California, 1873.

*d* See opinion of the Judge-Advocate-General, as adopted by the President, in *G. C. M. O. 66*, Headquarters of Army, 1879; and compare remarks of reviewing officers, in *G. O. 11*, Department of California, 1865; *G. C. M. O. 31*, Department of Dakota, 1869; *G. C. M. O. 8*, Fourth Military District, 1867.

on account of his offense, the fact that his act was in a measure sanctioned by the act or practice of superior authority, etc. (Ibid., 398, par. 15.)

*Weight of evidence.*—The weight of evidence does not depend upon the number of the witnesses. A single witness, whose statements, manner, and appearance on the stand are such as to commend him to credit and confidence, will sometimes properly outweigh several less acceptable and satisfactory witnesses. (a) But a court-martial can not properly exclude from consideration the testimony of a witness because it is diffuse and inconclusive (peculiarities which may result from embarrassment or infelicity of expression), provided it be pertinent to the issue. (Ibid., 394, par. 3.)

*Leading questions.*—In commencing the examination of a witness, it is a leading of the witness, and objectionable, to read to him the charge and specification or specifications, since he is thus instructed as to the particulars in regard to which he is to testify and which he is expected to substantiate. (b) So to read or state to him in substance the charge, and ask him "what he knows about it," or in terms to that effect, is loose and objectionable as encouraging irrelevant and hearsay testimony. The witness should simply be asked to state what was said and done on the occasion, etc. A witness should properly also be examined on specific interrogatories, and not be called upon to make a general statement in answer to a single general question. (c) (Ibid., 394, par. 5.)

*Opinion.*—Upon a trial where the offense is drunkenness or drunken conduct, charged under article 62, or drunkenness on duty, charged under article 38, it is not essential to confine the testimony to a description of the conduct and demeanor of the accused, but it is admissible to ask a witness directly if the accused "was drunk," or for a witness to state that the accused "was drunk," on the occasion or under the circumstances charged. Such a statement is not viewed by the authorities as of the class of expressions of opinion which are properly ruled out on objection unless given by experts, but as a mere statement of a matter of observation palpable to persons in general, and so proper to be given by any witness as a fact in his knowledge. (d) (Ibid., 395, par. 6.)

A statement to the effect that a person was intoxicated is not inadmissible in evidence as being an expression of an opinion. Whether a person is drunk or sober is "a fact patent to the observation of all, requiring no scientific knowledge." (e) (Ibid., 400, par. 25.)

An officer of the Quartermaster Department was admitted by a court martial to testify as an "expert" in regard to the proper performance of his duties by a chief quartermaster of a military department. Held that such testimony was inadmissible and should have been ruled out; the subject being one regulated by law and orders, and the witness being in no proper sense an expert. (Ibid., par. 26.)

*Refreshing memory.*—Where a witness for the prosecution was permitted by a court-martial to temporarily suspend his testimony and leave the court room for the purpose of refreshing his memory as to certain dates, held that such action was irregular and the further testimony of the witness as to such dates inadmissible. By the course pursued the court and accused were prevented from knowing by what means the memory of the witness had been refreshed—whether, for instance, it may not have been refreshed by oral statements of some person or persons. (Ibid., 399, par. 19.)

*Confessions.*—A confession is competent evidence when free and voluntary; otherwise where made through the influence of hope and fear. (f) So where an officer admitted to a superior, in writing, the commission of a military offense and promised not to repeat the same, under the well-founded hope and belief that a charge which had been preferred against him therefor would be withdrawn, held that, in case he were actually brought to trial upon such charge, the admission thus made would not properly be received in evidence against his objection. Confessions made by private soldiers to officers or noncommissioned officers, though not shown to have been made under the influence of promise or threat, should yet, in view of the military relations of the parties, be received with caution. (g) Mere silence on the part of an accused, when questioned as to his supposed offense, is not to be treated as a confession. (h) (Ibid., 397, par. 13.)

A confession that he had deserted, made by an alleged deserter to a police officer, who, on arresting him, assured him that if he told the truth he (the officer) would give him an opportunity to escape before being delivered up to the military authorities, held clearly not admissible in evidence, as having been induced by promise of favor on the part of a person in authority. (Ibid., 399, par. 20.)

#### PRIVILEGED COMMUNICATIONS.

Official communications between the heads of the Departments of the Government and their subordinate officers are privileged. Were it otherwise it would be impossible for such superiors to administer effectually the public affairs with which they are intrusted. (Ibid., 398, par. 18.)

#### PRESUMPTION AS TO PERFORMANCE OF DUTY.

The law presumes that public officers duly perform their official functions, and this presumption continues till the contrary is shown. (Ibid., 398, par. 17.)

a Compare *Rudolph v. Lane*, 57 Ind., 115; *McCrum v. Corby*, 15 Kans., 117.

b Compare *G. O. 12*, Department of the Missouri, 1862; *G. O. 36*, *ibid.*, 1863; *G. O. 29*, Department of California, 1865; *G. O. 67*, Department of the South, 1874.

c See *G. C. M. O. 14*, 24, Department of Dakota, 1877.

d *People v. Eastwood*, 14 N. York, 562; *Stacy v. Portland Pub. Co.*, 68 Maine 279; *Sydeleman v. Beckwith*, 43 Conn., 12; *State v. Huxford*, 47 Iowa, 16; *G. O. 42*, Department of the Platte, 1871.

e *Lawson on Exp. and Opin. Ev.*, p. 473, et seq.

f *United States v. Pumphreys*, 1 Cranch C. C., 74; *U. S. v. Hunter*, *ibid.*, 317; *U. S. v. Charles*, 2 *ibid.*, 76; *U. S. v. Pocklington*, *ibid.*, 293; *U. S. v. Nott*, 1 McLean, 499; *U. S. v. Cooper*, 3 Qu. L. J., 42; *Sparf and Hansen v. U. S.*, 156 U. S., 51.

g See *G. C. M. O. 3*, War Department, 1876; *G. O. 54*, Department of Dakota, 1867. And compare *Cady v. State*, 44 Miss., 332.

h See *Campbell v. State*, 55 Ala., 80.

the seals of such Departments, respectively, shall be admitted in evidence equally with the originals thereof.<sup>1</sup>

Copies of records, etc., in office of Solicitor of the Treasury.  
Feb. 22, 1849.  
c. 61, s. 2, v. 9, p. 347.

Sec. 883, R. S.

Transcripts from books, etc., of the Treasury, in suits against delinquents.

Mar. 3, 1797, c. 20, s. 1, v. 1, p. 512; Mar. 3, 1817, c. 45, s. 11, v. 3, p. 367; July 31, 1894, s. 17, v. 28, p. 210.

Sec. 886, R. S.

**1348.** Copies of any documents, records, books, or papers in the office of the Solicitor of the Treasury, certified by him under the seal of his office, or, when his office is vacant, by the officer acting as Solicitor for the time, shall be evidence equally with the originals.

**1349.** When suit is brought in any case of delinquency of a revenue officer, or other person accountable for public money, a transcript from the books and proceedings of the Treasury Department, certified by the Secretary or an Assistant Secretary of the Treasury and authenticated under the seal of the Department, or, when the suit involves the accounts of the War or Navy Departments, certified by the Auditors respectively charged with the examination of those accounts, and authenticated under the seal of the Treasury Department, shall be admitted as evidence, and

<sup>1</sup> The muster rolls on file in the War Department are official records, and copies of the same, duly certified, are primary evidence of the facts originally entered therein and not compiled from other sources, (a) subject, of course, to be rebutted by evidence that they are mistaken or incorrect. So though such rolls are evidence that the soldier was duly enlisted, or mustered into the service, and is therefore duly held as a soldier, they may be rebutted in this respect by proof of fraud or illegality in the enlistment or muster (on the part of the representative of the United States or otherwise), properly invalidating the proceeding and entitling the soldier to a discharge. (But that the entries in such rolls are not proof of the commission of an offense, as desertion, for example, see *Desertion*.) (Dig. Opin. J. A. Gen., 395, par. 9.)

A descriptive list is but secondary evidence and not admissible to prove the facts recited therein. It is not a record of original entries, made by an officer under a duty imposed upon him by law or the custom of the service, but is simply a compilation of facts taken from other records. (Ibid., 401, par. 33.)

General orders issued from the War Department or headquarters of the Army may ordinarily be proved by printed official copies in the usual form. The court will, in general, properly take judicial notice of the printed order as genuine and correct. A court-martial, however, should not, in general, accept in evidence, if objected to, a printed or written special order (which has not been made public to the Army) without some proof of its genuineness and official character. (b) (Ibid., 396, par. 10.)

A court-martial (by subpoena duces tecum, through the judge-advocate) may summon a telegraph operator to appear before it bringing with him a certain telegraphic dispatch. But it is beyond the power of such court to require such witness, against his will, to surrender the dispatch, or a copy, to be used in evidence. (Ibid., 401, par. 35.)

In view of the embarrassment which must generally attend the proof, before a court-martial, of the sending or receipt of telegraphic messages by means of a resort, by subpoena duces tecum, to the originals in possession of the telegraph company, (c) advised that the written or printed copy, furnished by the company and received by the person to whom it is addressed, should in general be admitted in evidence by a court-martial in the absence of circumstances casting a reasonable doubt upon its genuineness or correctness. But where it is necessary to prove that a telegram which was not received, or the receipt of which is denied and not proven, was actually duly sent, the operator or proper official of the company, or other person cognizant of the fact of sending, should be summoned as a witness. (Ibid., p. 396, par. 11.)

The "enlistment paper," the "physical examination paper," and the "outline

<sup>a</sup> But note in this connection the ruling of the supreme court of Massachusetts in the case of *Hanson v. S. Scituate*, 115 Mass., 336, that an official certificate from the Adjutant-General's Office to the effect that certain facts appeared of record in that office, but which did not purport to be a transcript from the record itself, and was therefore simply a personal statement, was not competent evidence of such facts.

It has been held by the United States Supreme Court in a recent case, *Evanston v. Gunn*, 9 Otto, 660, that the record made by a member of the United States Signal Corps of the state of the weather and the direction and velocity of the wind on a certain day was competent evidence of the facts reported, as being in the nature of an official record kept by a public officer in the discharge of a public duty.

<sup>b</sup> See a similar ruling in *G. O. 121*, Second Military District, 1867.

<sup>c</sup> The subject of the extent of the authority of the courts to compel telegraph companies to produce original private telegrams for use in evidence is most fully treated in an essay by Henry Hitchcock, esq., on the "Inviolability of Telegrams," published in the *Southern Law Review* for October, 1879.



the court trying the cause shall be authorized to grant judgment and award execution accordingly. And all copies of bonds, contracts, or other papers relating to, or connected with, the settlement of any account between the United States and an individual, when certified by such Auditor to be true copies of the originals on file, and authenticated under the seal of the Department, may be annexed to such transcripts, and shall have equal validity, and be entitled to the same degree of credit which would be due to the original papers if produced and authenticated in court: *Provided*, That where suit is brought upon a bond or other sealed instrument, and the defendant pleads "non est factum," or makes his motion to the court, verifying such plea or motion by his oath, the court may take the same into consideration, and, if it appears to be necessary for the attainment of justice, may require the production of the original bond, contract, or other paper specified in such affidavit.<sup>1</sup>

card" are original writings made by officers in the performance of duty and competent evidence of the facts recited therein. Copies, authenticated under the seal of the War Department, according to section 882, Revised Statutes, are equally admissible with the originals. (*Ibid.*, 401, par. 31.)

The morning report book is an original writing. To properly admit extracts in evidence, the book should be first identified by the proper custodian, and the extracts then not merely read to the court by the witness, but copied, and the copies, properly verified, attached as exhibits to the record of the court. (*Ibid.*, par. 32.)

Copies of pay accounts (charged to have been duplicated) are admissible in evidence where the accused has by his own act placed the originals beyond the reach of process and fails to produce them in court on proper notice. So where the originals are in the hands of a person who has left the United States, so that they can not be reached, on notice to the accused to produce them, or otherwise. (*Ibid.*, par. 34.)

To the admission in evidence of a letter written and signed by the accused (of which the introduction is contested) proof of his handwriting is necessary. Evidence of handwriting by comparison is not admissible at common law except where the standard of comparison is an acknowledged or proved genuine writing already in evidence in the case. A writing not in evidence and simply offered to be used as a standard is not admissible. (*Ibid.*, par. 36.)

At the trial, in 1894, of an officer charged with a disorder and breach of discipline which involved the killing by him of another officer, there was offered in evidence, on the part of the accused, to exhibit the character and disposition of the officer killed, a copy of a general court-martial order of 1872, setting forth certain charges alleging dishonest and unbecoming conduct, upon which the latter officer was then tried and convicted, and the findings of the court thereon. *Held*, that such evidence was wholly inadmissible for the purpose designed. (*Ibid.*, 402, par. 37.)

Strictly speaking, a press copy is secondary to the original document from which it is taken. Such a copy is receivable in evidence on proof of the loss of the original. At the best, however, it continues secondary; hence it has been held that a copy can be produced from a press copy of a lost writing without producing the principal copy. Photographs and other reproductions are secondary. (1 Wharton Ev., sec. 93.)

Except by the consent of the opposite party, the testimony contained in the record of a previous trial of the same or a similar case can not properly be received in evidence on a trial by court-martial; nor can the record of a board of investigation ordered in the same case be otherwise—so admitted. In all cases (other than that provided for by the one hundred and twenty-first article of war) testimony given upon a previous hearing, if desired to be introduced in evidence upon a trial, must (unless it be otherwise specially stipulated between the parties) be offered de novo and as original matter. (*Dig. Opin. J. A. Gen.*, 395, par. 7.)

Affidavits taken ex parte, and not as depositions under article 91, are in no case admissible as evidence on a trial by court-martial, if objected to. (*Ibid.*, par. 8.)

<sup>1</sup> *Walton v. U. S.*, 9 Wh., 651; *U. S. v. Buford*, 3 Pet., 12; *Smith v. U. S.*, 5 Pet., 292; *Cox v. U. S.*, 6 Pet., 172; *U. S. v. Jones*, 8 Pet., 375; *Gratiot v. U. S.*, 15 Pet., 336; *U. S. v. Irving*, 1 How., 250; *Hoyt v. U. S.*, 10 How., 109; *Bruce v. U. S.*, 17 How., 437; *U. S. v. Edwards*, 1 McLean, 467; *U. S. v. Hilliard et al.*, 3 McLean, 324; *U. S. v. Lent*, 1 Paine, 417; *U. S. v. Martin*, 2 Paine, 68; *U. S. v. Van Zandt*, 2 Cr. C. C., 328; *U. S. v. Griffith*, 2 Cr. C. C., 336; *U. S. v. Lee*, 2 Cr. C. C., 462; *U. S. v. Harrill*, 1 McAll., 243; *U. S. v. Mattison*, Gilp., 44; *U. S. v. Corwin*, 1 Bond, 149; *U. S. v. Gaussen*, 19 Wall., 198.

<sup>σ</sup> See G. C. M. O. 10, Headquarters Army, 1879; G. O. 21, Department of the Missouri, 1863; G. O. 17, Department of Arkansas, 1866; G. O. 19, Third Military District, 1867; G. O. 49, Department of Dakota, 1871.



**Transcripts from books of the Treasury in indictments for embezzlement of public moneys.** **1350.** Upon the trial of any indictment against any person for embezzling public moneys, it shall be sufficient evidence, for the purpose of showing a balance against such person, to produce a transcript from the books and proceedings of the Treasury Department, as provided by the preceding section.<sup>1</sup>

**Aug. 6, 1846, c. 90, s. 16, v. 9, p. 63; Mar. 2, 1797, c. 20, s. 1, v. 1, p. 512.** **Sec. 887, R. S.**

**Copies of returns in returns office.** **1351.** A copy of any return of a contract returned and filed in the returns office of the Department of the Interior, as provided by law, when certified by the clerk of the said office to be full and complete, and when authenticated by the seal of the Department, shall be evidence in any prosecution against any officer for falsely and corruptly swearing to the affidavit required by law to be made by such officer in making his return of any contract, as required by law, to said returns-office.

**June 2, 1862, c. 93, s. 4, v. 12, p. 412.** **Sec. 888, R. S.**

**Extracts from the Journals of Congress.** **1352.** Extracts from the Journals of the Senate, or of the House of Representatives, and of the Executive Journal of the Senate when the injunction of secrecy is removed, certified by the Secretary of the Senate or by the Clerk of the House of Representatives, shall be admitted as evidence in the courts of the United States, and shall have the same force and effect as the originals would have if produced and authenticated in court.

**Copies of records, etc., in offices of United States consuls, etc.** **1353.** Copies of all official documents and papers in the office of any consul, vice-consul, or commercial agent of the United States, and of all official entries in the books or records of any such office, certified under the hand and seal of such officer, shall be admitted in evidence in the courts of the United States.

**Authentication of legislative acts and proof of judicial proceedings of States, etc.** **1354.** The acts of the legislature of any State or Territory, or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such State, Territory, or country affixed thereto. The records and judicial proceedings of the courts of any State or Territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate, that the said attestation is in due form. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken.<sup>2</sup>

<sup>1</sup> U. S. v. Gaussen, 19 Wall, 198.

<sup>2</sup> Ferguson v. Harwood, 7 Cr., 408; Mills v. Duryea, 7 Cr., 481; U. S. v. Amedy, 11 Wh., 392; Buckner v. Finley, 2 Pet., 592; Owings v. Hull, 9 Pet., 627; Urtetiqui v. D'Arbel,

**1355.** All records and exemplifications of books, which may be kept in any public office of any State or Territory, or of any country subject to the jurisdiction of the United States, not appertaining to a court, shall be proved or admitted in any court or office in any other State or Territory, or in any such country, by the attestation of the keeper of the said records or books, and the seal of his office annexed, if there be a seal, together with a certificate of the presiding justice of the court of the county, parish, or district in which such office may be kept, or of the governor, or secretary of state, the chancellor or keeper of the great seal, of the State, or Territory, or country, that the said attestation is in due form, and by the proper officers. If the said certificate is given by the presiding justice of a court, it shall be further authenticated by the clerk or prothonotary of the said court, who shall certify, under his hand and the seal of his office, that the said presiding justice is duly commissioned and qualified; or, if given by such governor, secretary, chancellor, or keeper of the great seal, it shall be under the great seal of the State, Territory, or country aforesaid in which it is made. And the said records and exemplifications, so authenticated, shall have such faith and credit given to them in every court and office within the United States as they have by law or usage in the courts or offices of the State, Territory, or country, as aforesaid, from which they are taken.

Proofs of records, etc., kept in offices not pertaining to courts. Mar. 27, 1804, c. 56, ss. 1, 2, v. 2, pp. 298, 299; Feb. 21, 1871, c. 62, v. 16, p. 419. Sec. 906, R. S.

**1356.** The edition of the Laws of the United States published by Little & Brown, shall be competent evidence of the several public and private acts of Congress, and of the several treaties therein contained, in all the courts of law and equity and of maritime jurisdiction, and in all the tribunals and public offices of the United States, and of the several States, without any further proof or authentication thereof.<sup>1</sup>

Little & Brown's edition of the Statutes to be evidence. Aug. 8, 1846, c. 100, s. 2, v. 9, p. 76. Sec. 908, R. S.

9 Pet., 700; *McElmoyle v. Cohen*, 13 Pet., 312; *Stacey v. Thrasher*, 6 How., 44; *Bank of Alabama v. Dalton*, 9 How., 522; *D'Arcy v. Ketchum*, 11 How., 165; *Railroad v. Howard*, 13 How., 307; *Booth v. Clark*, 17 How., 322; *Mason v. Lawraeson*, 1 Cr. C. C., 190; *Buford v. Hickman*, Hemp., 232; *Craig v. Brown*, Pet. C. C., 354; *Stewart v. Gray*, Hemp., 94; *Gardner v. Lindo*, 1 Cr. C. C., 78; *Trigg v. Conway*, Hemp., 538; *Turner v. Waddington*, 3 Wash. C. C., 126; *Cathn v. Underhill*, 4 McL., 199; *Morgau v. Curtenius*, 4 McL., 366; *Hale v. Brotherton*, 3 Cr. C. C., 594; *Mewster v. Spalding*, 6 McL., 24; *Parrot v. Habersham*, 1 Cr. C. C., 14; *Talcott v. Delaware Ins. Com.*, 2 Wash. C. C., 449; *James v. Stookey*, 1 Wash. C. C., 330; *Bennett v. Bennett*, Dist. Ct., Oregon, 1867.

<sup>1</sup> See, in respect to the Revised Statutes and Statutes at Large of the United States, paragraphs 402, 415, 419, 422, and 428, ante.

# CHAPTER XXXVI.

## CITIZENSHIP AND NATURALIZATION.

Par.	Par.
1357. Citizenship defined.	1369. Aliens honorably discharged from military service.
1358. Citizenship of children of citizens born abroad.	1370. Aliens honorably discharged from the naval service.
1359. Citizenship of married women.	1371. Minor residents.
1360. Citizenship of persons born in Oregon.	1392. Widow and children of declarants.
1361. Rights of citizenship forfeited by desertion.	1373. Aliens of African nativity and descent.
1362. Certain soldiers and sailors exempted from forfeitures of last section.	1374. Residence required.
1363. Avoiding the draft.	1375. Alien enemies not admitted.
1364. Right of expatriation.	1376. Children of persons naturalized.
1365. Protection to naturalized citizens in foreign states.	1377. Police court of District of Columbia has no power to naturalize aliens.
1366. Release of citizens imprisoned by foreign governments to be demanded.	1378. Naturalization of seamen.
1367. Naturalization of aliens.	1379. Citizenship to be accorded allottees and to Indians adopting civilized life.
1368. Declarations of intention, how made.	

## CITIZENSHIP.

Citizenship defined. **1357.** All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States.<sup>1</sup>

Citizenship of children of citizens born abroad. **1358.** All children heretofore born or hereafter born out of the limits and jurisdiction of the United States, whose fathers were or may be at the time of their birth citizens thereof, are declared to be citizens of the United States; but the rights of citizenship shall not descend to children whose fathers never resided in the United States.

Citizenship of married women. **1359.** Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized, shall be deemed a citizen.<sup>2</sup>

<sup>1</sup> *Planters' Bank v. St. John*, 1 Woods, 585; *McKay v. Campbell*, 2 Saw., 118.  
See, also, for a definition of the term "citizen of the United States," the fourteenth amendment to the Constitution.  
<sup>2</sup> *Kelly v. Owen*, 7 Wall, 496.

**1360.** All persons born in the district of country formerly known as the Territory of Oregon, and subject to the jurisdiction of the United States on the 18th May, 1872, are citizens in the same manner as if born elsewhere in the United States.

Citizenship of persons born in Oregon.  
May 18, 1872, c. 172, s. 3, v. 17, p. 134.  
Sec. 1995, R. S.

**1361.** All persons who deserted the military or naval service of the United States and did not return thereto or report themselves to a provost-marshal within sixty days after the issuance of the proclamation by the President, dated the 11th day of March, 1865, are deemed to have voluntarily relinquished and forfeited their rights of citizenship, as well as their right to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof.<sup>1</sup>

Rights of citizenship forfeited for desertion, etc.  
Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490.  
Sec. 1996, R. S.

**1362.** No soldier or sailor, however, who faithfully served according to his enlistment until the 19th day of April, 1865, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date, shall be held to be a deserter from the Army or Navy; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred, under the preceding section, by the loss of citizenship and of the right to hold office, in consequence of his desertion.

Certain soldiers and sailors exempted from the forfeitures of the last section.  
July 19, 1867, c. 28, v. 15, p. 14.  
Sec. 1997, R. S.

**1363.** Every person who hereafter deserts the military or naval service of the United States, or who, being duly enrolled, departs the jurisdiction of the district in which he is enrolled, or goes beyond the limits of the United States, with intent to avoid any draft into the military or naval service, lawfully ordered, shall be liable to all the penalties and forfeitures of section nineteen hundred and ninety-six.<sup>1</sup>

Avoiding the draft.  
Mar. 3, 1865, c. 79, s. 21, v. 13, p. 490.  
Sec. 1998, R. S.

**1364.** Whereas the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness; and whereas in the recognition of this principle this Government has freely received emigrants from all nations, and invested them with the rights of citizenship; and whereas it is claimed that such American citizens, with their descendants, are subjects of foreign states, owing allegiance to the governments thereof; and whereas it is necessary to the maintenance of public peace that this claim of foreign allegiance should be promptly and finally disavowed: Therefore any declaration, instruction, opinion,

Right of expatriation.  
July 27, 1868, c. 249, s. 1, v. 15, p. 223.  
Sec. 1999, R. S.

<sup>1</sup> These penalties only take effect upon conviction by court martial. *Kurtz v. Moffett*, 115 U. S., 501.

order, or decision of any officer of the United States which denies, restricts, impairs, or questions the right of expatriation, is declared inconsistent with the fundamental principles of the Republic.

Protection to naturalized citizens in foreign states.

July 27, 1868, c. 249, s. 2, v. 15, p. 224.

Sec. 2000, R. S.

Release of citizens imprisoned by foreign governments to be demanded.

July 27, 1868, c. 249, s. 3, v. 15, p. 224.

Sec. 2001, R. S.

**1365.** All naturalized citizens of the United States, while in foreign countries, are entitled to and shall receive from this Government the same protection of persons and property which is accorded to native-born citizens.

**1366.** Whenever it is made known to the President that any citizen of the United States has been unjustly deprived of his liberty by or under the authority of any foreign government, it shall be the duty of the President forthwith to demand of that government the reasons of such imprisonment; and if it appears to be wrongful and in violation of the rights of American citizenship, the President shall forthwith demand the release of such citizen, and if the release so demanded is unreasonably delayed or refused, the President shall use such means, not amounting to acts of war, as he may think necessary and proper to obtain or effectuate the release; and all the facts and proceedings relative thereto shall as soon as practicable be communicated by the President to Congress.

#### NATURALIZATION.<sup>1</sup>

Naturalization of aliens.

Sec. 2165, R. S.

**1367.** An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

Declaration of intention.

Apr. 14, 1802, c. 28, ss. 1, 3, v. 2, pp. 153, 155; May 26, 1824, c. 186, s. 4, v. 4, p. 69; Feb. 1, 1876, c. 5, v. 19, p. 2.

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the Territories, or a court of record of any of the States having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is bona fide his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Oath\* to support the Constitution of the United States.

Apr. 14, 1802, c. 28, s. 1, v. 2, p. 153.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the Constitution of the United States, and that he absolutely and entirely

<sup>1</sup> The power of naturalization is exclusively in Congress. (*Chirac v. Chirac*, 2 Wheat., 260.) Jurisdiction for that purpose having been conferred by Congress, courts of record in the several States and Territories have the power to extend the privileges of citizenship to aliens by an application of the provisions of the naturalization laws of the United States. (*Campbell v. Gordon*, 6 Cr., 176; *Stark v. Chesapeake Ins. Co.*, 7 Cr., 420; *Chirac v. Chirac*, 2 Wheat., 259; *Osborn v. United States Bank*, 9 Wheat., 827; *Spratt v. Spratt*, 4 Pet., 393.)

For a discussion of the power of the several States to confer the privilege of State citizenship upon aliens, see *Collet v. Collet* (2 Dall., 294).

renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state, or sovereignty of which he was before a citizen or subject; which proceedings shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the State or Territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.<sup>1</sup>

Residence in United States or States, and good moral character.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Titles of nobility to be renounced.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the State or Territory where such court is at the time held; and on his declaring on oath that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the Constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to

Persons residing in the United States before Jan. 29, 1795.

<sup>1</sup> By the treaty of cession with Russia, subjects of that nation inhabiting the Territory of Alaska at the date of the treaty, and continuing to remain such inhabitants for three years, became thereupon American citizens. But the treaty neither mentions nor refers to British subjects or the subjects of any foreign nation other than Russia. Such persons, therefore, residing in the Territory, can become citizens only in the mode and form prescribed by the United States naturalization laws. (Dig. J. A. Gen., 148.)

citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings, required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Persons residing between June 18, 1798, and June 18, 1812.

Mar. 22, 1816, c. 31, s. 2, v. 3, p. 259, May 24, 1828, c. 116, s. 2, v. 4, p. 310.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

Declaration of intention, how made.

Feb. 1, 1876, c.

5, v. 19, p. 2.  
Sec. 2165, R. S.

**1368.** That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk are hereby declared as legal and valid as if made before one of the courts named in said section.

Aliens honorably discharged from military service.

July 17, 1862, c.

200, s. 21, v. 12, p.

597.

Sec. 2166, R. S.

**1369.** Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States,

upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.<sup>1</sup>

**1370.** Any alien of the age of twenty-one years and upward who has enlisted or may enlist in the United States Navy or Marine Corps, and has served or may hereafter serve five consecutive years in the United States Navy or one enlistment in the United States Marine Corps, and has been or may hereafter be honorably discharged, shall be admitted to become a citizen of the United States upon his petition, without any previous declaration of his intention to become such; and the court admitting such alien shall, in addition to proof of good moral character, be satisfied by competent proof of such person's service in and honorable discharge from the United States Navy or Marine Corps. *Act of July 26, 1894 (28 Stat. L., 124).*

Aliens honorably discharged from the naval service.

July 26, 1894, v. 28, p. 124.

**1371.** Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court,

Minor residents.

May 26, 1824, c. 186, s. 1, v. 4, p. 69. Sec. 2167, R. S.

<sup>1</sup>Aliens, honorably discharged after enlisting in our Army, are not, by such discharge alone, made citizens, but they are thereupon entitled (under a provision of the act of July 17, 1862, now section 2166, Revised Statutes) to be admitted to become citizens without previous declaration of intention, upon merely presenting to the proper court (see section 2165, Revised Statutes) a petition for the purpose, accompanied by proof of at least one year's residence within the United States previous to the application, of good moral character, and of the fact of honorable discharge. (Dig. J. A. Gen., p. 148, par. 1.)

Under the act of July 30, 1892, an enlisted man, to be eligible for promotion as commissioned officer, must be a citizen of the United States. And, in order to be promptly naturalized, under section 2166, Revised Statutes, he must first be honorably discharged. So, advised that such alien, to be qualified for examination and appointment under the act, should be discharged and, after naturalization, be reenlisted. (Ibid., par. 3.)

The mere enlistment and honorable discharge of an alien as a soldier of our Army do not *per se* constitute him a citizen of the United States. He must still make formal petition to one of the courts, etc., specified in section 2165, Revised Statutes, and present thereupon the evidence required by section 2166. (Ibid., 238, par. 1.)

A native-born minor is a citizen of the United States under the fourteenth amendment of the Constitution. (Ibid., par. 2.)



that, for two years next preceding, it has been his bona-fide intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

Widow and children of declarants.

Mar. 26, 1804, c. 47, s. 2, v. 2, p. 293.  
Sec. 2168, R. S.

**1372.** When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths proscribed<sup>1</sup> by law.

Aliens of African nativity and descent.

July 14, 1870, c. 254, s. 7, v. 16, p. 256; Feb. 18, 1875, c. 80, v. 18, p. 318. Sec. 2169, R. S.

**1373.** The provisions of this Title<sup>2</sup> shall apply to aliens [being free white persons, and to aliens] of African nativity and to persons of African descent.

Residence required.

Mar. 3, 1813, c. 42, s. 12, v. 2, p. 811.

**1374.** No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided within the United States.

Sec. 2170, R. S. Alien enemies not admitted.

Apr. 14, 1802, c. 28, s. 1, v. 2, p. 153; July 30, 1813, c. 36, v. 3, p. 53.

**1375.** No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the Territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

Sec. 2171, R. S.

Citizenship of children of persons naturalized.

Apr. 14, 1802, c. 28, s. 4, v. 2, p. 155. *Campbell v. Gordon*, 6 Cr. 176; *U.S. v. Hirschfeld*, 13 Blatch., 330.

Sec. 2172, R. S.

**1376.** The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the Government of the United States, may have become citizens of any one of the States, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the

<sup>1</sup> Error in the roll; should be *prescribed*.

<sup>2</sup> Title XXX, Revised Statutes; paragraphs 1367-1379 of this work.

United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any State, or who has been legally convicted of having joined the army of Great Britain during the Revolutionary War, shall be admitted to become a citizen without the consent of the legislature of the State in which such person was proscribed.

**1377.** The police court of the District of Columbia shall have no power to naturalize foreigners.

power to naturalize aliens. June 17, 1870, c. 133, s. 5, v. 16, p. 154.

Police court of District of Columbia has no

Sec. 2173, R. S.

**1378.** Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant-vessel of the United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant-vessel of the United States, anything to the contrary in any act of Congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.<sup>1</sup>

Naturalization of seamen.

June 7, 1872, c.

322, s. 29, v. 17, p.

268.

Sec. 2174, R. S.

**1379.** That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized

Citizenship to be accorded to allottees and Indians adopting civilized life.

Sec. 6, Feb. 8, 1887, v. 24, p. 390.

<sup>1</sup>For statutory provisions respecting seamen in the naval service of the United States, see paragraph 1370, *ante*.

life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.<sup>1</sup> *Sec. 6, act of February 8, 1887 (24 Stat. L., 390.)*

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<sup>1</sup> For the Indian allotment act, see the act of February 8, 1887 (24 Stat. L., 358-390).

## CHAPTER XXXVII.

### THE INDIANS—INDIAN AGENTS—THE INDIAN COUNTRY.

Par.	Par.
1380. Indian inspectors; term of office.	1404. Reports of schools.
1381. Powers and duties of inspectors.	1405. Discontinuance of the offices of subagents, interpreters, etc.
1382. Indian agents.	1406. No person to hold two offices; leave of absence.
1383. Services of certain agents, etc., to be dispensed with.	1407. Additional security from disbursing officers, etc.
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1385. Salary of Indian agents.	1409. Allowance for traveling expenses.
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1389. Indian agents to make annual reports of schools, etc.	1413. Payment of certain annuities in coin.
1390. Discontinuance and transfer of agencies.	1414. Payment of annuities in goods.
1391. Residence of Indian agents.	1415. Purchase of goods for Indians.
1392. Officers of the Army may be required to act as Indian agents.	1416. Manner of purchase.
1393. Officers of the Army to be detailed as agents.	1417. Claims for supplies.
1394. Compensation for extra services.	1418. Modes of paying annuities and distributing goods.
1395. Acknowledgment of deeds, etc., by agents.	1419. Withholding annuities from intoxicated persons.
1396. Appointment of sub-Indian agents.	1420. Army officer to be present at delivery of annuities.
1397. Limits of superintendencies, agencies, etc.	1421. Mode of disbursements.
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1399. Interpreters.	1423. Rolls of Indians entitled to supplies.
1400. Preference to Indians as interpreters.	1424. Mode of distributing.
1401. Instruction of Indians.	1425. Annual accounts of disbursements, etc.
1402. When tribes may direct the appointment of blacksmiths, etc.	1426. Sales of cattle; penalty.
1403. Industrial training schools for Indian youth.	

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| Par.  | Par.  |
| 1427. Restriction on advances to superintendents, etc.                                      | 1455. Indians trespassing upon lands of civilized Indians.  |
| 1428. Misapplication of funds.  | 1456. Suspension of chief for trespass.   |
| 1429. Indian depredation claims; annuities.   | 1457. Sale of buildings belonging to the United States.   |
| 1430. Funds for education.  | 1458. Sale of land with buildings.  |
| 1431. Annuities to hostile Indians.   | 1459. Penalties, how recovered.   |
| 1432. Goods withheld from chiefs who have violated treaty stipulations.                     | 1460. Proceedings against goods.  |
| 1433. Moneys due Indians holding American captives.   | 1461. Burden of proof.  |
| 1434. Contracts with Indians.   | 1462. Sale of cattle by Indian agents.  |
| 1435. Payments under contracts restricted.  | 1463. Trading with Indians.   |
| 1436. The same; penalty.  | 1464. License to trade.   |
| 1437. Assignments of contracts restricted.  | 1465. Refusal of license.   |
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| 1439. Moneys due incompetent or orphan Indians.   | 1467. Prohibition of trade by the President.  |
| 1440. Number of Indians present at issues to be reported.                                   | 1468. Penalty for trading without a license.  |
| 1441. Army rations for Indians.   | 1469. Penalty for foreigners entering Indian country without passports.   |
| 1442. Sending seditious messages; penalty.  | 1470. Prohibited purchases and sales.   |
| 1443. Carrying seditious messages; penalty.   | 1471. Trading in arms, etc., in district occupied by uncivilized or hostile Indians; penalty.                               |
| 1444. Correspondence with foreign nations to excite Indians to war; penalty.                | 1472. Prohibition of hunting on Indian lands.   |
| 1445. General superintendence by the President over tribes removed west of the Mississippi. | 1473. Penalty for removing cattle from Indian country.  |
| 1446. Survey of Indian reservations.  | 1474. Introduction of intoxicating liquors into Indian country prohibited; penalty; exception in favor of War Department.   |
| 1447. White men marrying Indian women not to acquire tribal rights.                         | 1475. Officers and soldiers, etc., not to barter, donate, or furnish liquor, wine, beer, etc., to Indians upon reservation. |
| 1448. Indian women marrying white men to become citizens.                                   | 1476. Power of superintendents, agents, and post commanders, etc., to search for concealed liquors.                         |
| 1449. Evidence of marriage.   | 1477. Penalty for setting up distillery in Indian country.  |
| 1450. Purchases or grants from Indians.   | 1478. Assault; penalty.   |
| 1451. Driving stock to feed on Indian lands.  | 1479. Arson.  |
| 1452. Settling on or surveying lands belonging to Indians by treaty.                        | 1480. Forgery and depredations on mails.  |
| 1453. Protection of Indians desiring civilized life.  | 1481. General laws respecting crimes extended to Indian country.  |
| 1454. Citizenship to be accorded to allottees and Indians adopting civilized life.          |   |

Par.	Par.
1482. Exceptions to operation of preceding sections.	1491. Executing process.
1483. Removal of persons.	1492. Reparation for injured property.
1484. Penalty for return.	1493. Payment where offender is unable to make same.
1485. Removal from reservations.	1494. Injuries to property by Indians.
1486. Penalty for timber depredations.	1495. Superintendents, etc., authorized to take depositions.
1487. Army officers, etc., prohibited from giving permission to Indians to go into the State of Texas.	1496. Indians committing certain crimes to be subject to the laws.
1488. Employment of military force in apprehending persons violating the law.	1497. Assaults upon officials; penalty.
1489. Detention of persons apprehended by military.	1498. Marshals to execute process in Indian Territory.
1490. Arrest of absconding Indians guilty of crime.	1499. 1500. The Indian police.

## INDIAN INSPECTORS AND INDIAN AGENTS.

**1380.** There shall be appointed by the President, by and with the advice and consent of the Senate, a sufficient number of Indian inspectors, not exceeding five<sup>1</sup> in number, to perform the duties required of such inspectors by the provisions of this Title. Each inspector shall hold his office for four years, unless sooner removed by the President.

**1381.** Each Indian superintendency and agency shall be visited and examined as often as twice a year<sup>2</sup> by one or more of the inspectors. Such examination shall extend to a full investigation of all matters pertaining to the business of the superintendency or agency, including an examination of accounts, the manner of expending money, the number of Indians provided for, contracts of all kinds connected with the business, the condition of the Indians, their advancement in civilization, the extent of the reservations, and what use is made of the lands set apart for that purpose, and, generally, all matters pertaining to the Indian service. For the purpose of making such investigations, each inspector shall have power to examine all books, papers, and vouchers, to administer oaths, and to examine on oath all officers and persons employed in the superintendency or agency, and all such other persons as he may deem necessary or proper. The inspectors, or any of them, shall have power to suspend any superintendent or agent

Indian inspectors; term of office.  
Feb. 14, 1873, c. 138, s. 6, v. 17, p. 463; Mar. 3, 1875, c. 132, v. 18, p. 422.  
Sec. 2043, R. S.

Powers and duties of inspectors.  
*Ibid.*  
Mar. 3, 1875, c. 132, ss. 1, 4, 5, v. 18, pp. 422, 449.  
Sec. 2045, R. S.

<sup>1</sup>By the act of March 3, 1875 (18 Stat. L., ch. 132, sec. 1, p. 420), the number of commissioners was reduced to three. For powers and duties of the Secretary of the Interior respecting Indian affairs, see paragraphs 372-374, ante.

<sup>2</sup>The act of March 3, 1875 (18 Stat. L., p. 422), repeals this requirement.

or employé, and to designate some person in his place temporarily, subject to the approval of the President, making immediate report of such suspension and designation; and upon the conclusion of each examination a report shall be forwarded to the President without delay. The inspectors, in the discharge of their duties, jointly and individually, shall have power, by proper legal proceedings, which it shall be the duty of the district attorney of the United States for the appropriate district duly to effectuate, to enforce the laws, and to prevent the violation of law in the administration of affairs in the several agencies and superintendencies. So far as practicable, the examinations of the agencies and superintendencies shall be made alternately by different inspectors, so that the same agency or superintendency may not be examined twice in succession by the same inspector or inspectors.

Indian agents.  
Feb. 14, 1873, c.  
138, s. 1. v. 17, p.  
437; June 22, 1874,  
c. 389, v. 18, p. 147.  
Sec. 2052, R.S.

**1382.** The President is authorized to appoint from time to time, by and with the advice and consent of the Senate, the following Indian agents:

Three for the tribes in Oregon.

Fourteen for the tribes east of the Rocky Mountains, and north of New Mexico and Texas.

Seven for the tribes in New Mexico.

Three for the tribes in the Territory of Washington.

One for the tribes in Kansas.

One for the Kickapoos.

One for the Delawares.

Two for the tribes in Utah.

One for the Poncas.

One for the Pawnees in Nebraska, each with an annual salary of fifteen hundred dollars.

Four for the tribes in California, at an annual salary of eighteen hundred dollars each.

Three for the tribes in Texas.

One for the Wichitas and neighboring tribes west of the Choctaws and Chickasaws, at an annual salary of one thousand dollars.

Services of certain agents, etc., to be dispensed with.

*Ibid.*, p. 438.  
June 22, 1874,  
c. 389, v. 18, p. 147;  
June 22, 1874, c.  
289, v. 18, p. 177.

Sec. 2053, R.S.  
The same.  
July 15, 1870,  
c. 296, s. 6, v. 16, p.  
360.  
Sec. 2054, R.S.

**1383.** It shall be the duty of the President to dispense with the services of such Indian agents and superintendents as may be practicable; and where it is practicable he shall require the same person to perform the duties of two agencies or superintendencies for one salary.

**1384.** Whenever any one or more of the superintendencies is abolished by law, or discontinued by the President, the Indian agents in such superintendencies shall report directly to the Commissioner of Indian Affairs.

**1385.** Each Indian agent shall be entitled to receive a salary at the rate of fifteen hundred dollars a year [except as herein otherwise provided for]. Salary of Indian agents. Feb. 14, 1873, c. 138, s. 1, v. 17, p. 244. 438; Feb. 27, 1877, c. 69, v. 19, p. 244. Sec. 2055, R.S.

**1386.** Each Indian agent shall hold his office for the term of four years [and until his successor is duly appointed and qualified.]<sup>1</sup> Term of office. Feb. 27, 1851, c. 14, s. 6, v. 9, p. 587; Apr. 8, 1864, c. 48, s. 4, v. 13, p. 40. Sec. 2056, R.S.

**1387.** Each Indian agent, before entering upon the duties of his office, shall give bond in such penalties and with such security as the President or the Secretary of the Interior may require. Bonds. Feb. 27, 1851, c. 14, s. 6, v. 9, p. 587; Mar. 3, 1875, c. 132, s. 10, v. 18, p. 451. Sec. 2057, R.S.

**1388.** Each Indian agent shall, within his agency, manage and superintend the intercourse with the Indians, agreeably to law; and execute and perform such regulations and duties, not inconsistent with law, as may be prescribed by the President, the Secretary of the Interior, the Commissioner of Indian Affairs, or the superintendent of Indian Affairs.<sup>2</sup> Duties. June 30, 1834, c. 162, s. 7, v. 4, p. 736; June 5, 1850, c. 16, s. 4, v. 9, p. 736; Feb. 27, 1851, c. 14, s. 5, v. 9, p. 587; Mar. 3, 1875, c. 132, ss. 4, 5, 10, v. 18, pp. 449, 451. Sec. 2058, R.S.

**1389.** That hereafter each Indian agent be required, in his annual report, to submit a census of the Indians at his agency or upon the reservation under his charge, the number of males above eighteen years of age, the number of females above fourteen years of age, the number of school children between the ages of six and sixteen years, the number of school-houses at his agency, the number of schools in operation and the attendance at each, and the names of teachers employed and salaries paid such teachers. Indian agents to make annual report of schools, etc. July 4, 1884, s. 9, v. 23, p. 98.  
*Sec. 9, act of July 4, 1884 (23 Stat. L., 98).*

**1390.** The President shall, whenever he may judge it expedient, discontinue any Indian agency, or transfer the same, from the place or tribe designated by law, to such other place or tribe as the public service may require.<sup>3</sup> Discontinuance and transfer of agencies. June 30, 1834, c. 162, s. 4, v. 4, p. 735. Sec. 2059, R.S.

**1391.** Every Indian agent shall reside and keep his agency within or near the territory of the tribe for which he may be agent, and at such place as the President may designate, and shall not depart from the limits of his agency without permission. Residence of Indian agents. *Ibid.* Sec. 2060, R.S.

**1392.** The President may require any military officer of the United States to execute the duties of an Indian agent; and when such duties are required of any military officer, he shall perform the same without any other compensation than his actual traveling expenses. Officers of the Army may be required to act as Indian agents. June 30, 1834, c. 162, ss. 4, 12, v. 4, pp. 735-737. Sec. 2062, R.S.

<sup>1</sup>Amended by the insertion of the words in brackets by the act of May 17, 1882 (22 Stat. L., 87).

<sup>2</sup>In this connection see acts of June 22, 1874 (18 Stat. L., 173), March 3, 1875 (18 Stat. L., 420), July 4, 1884 (23 Stat. L., 98), and the annual appropriation bills. See also *Minis v. U. S.*, 15 Pet., 423.

For Indian police see act of May 27, 1878 (20 Stat. L., 86). For provisions relating to the protection of officials of the United States in the Indian Territory, see the act of June 9, 1888 (25 Stat. L., 178). The act of March 2, 1887 (24 Stat. L., 463), provides that the Indian police are to be employed in maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations and within the Territory of Alaska, in the discretion of the Secretary of the Interior. See, in this connection, paragraphs 1499 and 1500, *post*.

<sup>3</sup>See act of March 1, 1883 (22 Stat. L., 451).



Officers of the Army to be detailed as agents; exception.  
July 13, 1892, v. 27, p. 120.

**1393.** That from and after the passage of this act the President shall detail officers of the United States Army to act as Indian agents at all agencies where vacancies from any cause may hereafter occur, who, while acting as such agents, shall be under the orders and direction of the Secretary of the Interior, except at agencies where, in the opinion of the President, the public service would be better promoted by the appointment of a civilian.<sup>1</sup> *Act of July 13, 1892 (27 Stat. L., 120).*

Compensation for extra services.

May 31, 1832, c. 109, s. 2, v. 4, p. 520.

**Sec. 2063, R. S.**

**1394.** No compensation beyond their actual expenses for extra services shall be allowed any Indian agent or sub-agent for services when doing duty under the order of the Government, detached from their agency and the boundary of the tribe to which they are agents or sub-agents.

Acknowledgment of deeds, etc., by agents.

Mar. 3, 1855, c. 204, s. 10, v. 10, p. 701.

**Sec. 2064, R. S.**

**1395.** Indian agents are authorized to take acknowledgments of deeds, and other instruments of writing, and to administer oaths in investigations committed to them in Indian country, pursuant to such rules and regulations as may be prescribed for that purpose, by the Secretary of the Interior; and acknowledgments so taken shall have the same effect as if taken before a justice of the peace.

Appointment of sub-Indian agents.

June 30, 1834, c. 162, s. 5, v. 4, p. 736.

**Sec. 2065, R. S.**

**1396.** A competent number of sub-Indian agents shall be appointed by the President, with a salary of one thousand dollars a year each, to be employed, and to reside wherever the President may direct, and who shall give bonds, with one or more sureties, in the penal sum of one thousand dollars, for the faithful execution of their duties. But no sub-agent shall be appointed who shall reside within the limits of any agency where there is an agent appointed.

Limits of superintendencies, agencies, and subagencies.

June 30, 1834, c. 162, s. 7, v. 4, p. 736; Mar. 3 1847, c. 66, s. 1, v. 9, p. 203.

Special agents and commissioners.

Mar. 3, 1863, c. 99, s. 1, v. 12, p. 792.

**Sec. 2067, R. S.**

Interpreters.

June 30, 1834, c. 162, s. 9, v. 4, p. 737.

**Sec. 2068, R. S.**

**1397.** The limits of each superintendency, agency, and sub-agency shall be established by the Secretary of the Interior, either by tribes or geographical boundaries.

**1398.** All special agents and commissioners not appointed by the President shall be appointed by the Secretary of the Interior.

**1399.** An interpreter shall be allowed to each agency. Where there are different tribes in the same agency, speaking different languages, one interpreter may be allowed, at the discretion of the Secretary of the Interior, for each of such tribes. Interpreters shall be nominated, by the proper agents, to the Department of the Interior for approval, and may be suspended by the agent from pay and duty,

<sup>1</sup> The act of August 15, 1894 (28 Stat. L., 288), contains a proviso to the effect that certain appropriations "shall not take effect or become available in any case for or during the time in which any officer of the Army of the United States shall be engaged in the performance of the duties of Indian agent at any of the agencies above named." This provision was repeated in the acts of March 2, 1895 (28 Stat. L., 878), and June 10, 1896 (29 Stat. L., 323).

and the circumstances reported to the Department of the Interior for final action.

**1400.** In all cases of the appointments of interpreters or other persons employed for the benefit of the Indians, a preference shall be given to persons of Indian descent, if such can be found, who are properly qualified for the execution of the duties.

Preference to  
Indians for in-  
terpreters.  
June 30, 1834, c.  
162, s. 9, v. 4, p.  
737.  
Sec. 2069, R. S.

#### INDIAN SCHOOLS.

**1401.** The President may, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, employ capable persons of good moral character to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined according to such instructions and rules as the President may give and prescribe for the regulation of their conduct, in the discharge of their duties. A report of the proceedings adopted in the execution of this provision shall be annually laid before Congress.<sup>1</sup>

Instruction of  
Indians.  
Mar. 3, 1819, c.  
85, v. 3, p. 516.  
Sec. 2071, R. S.

**1402.** Where any of the tribes are, in the opinion of the Secretary of the Interior, competent to direct the employment of their blacksmiths, mechanics, teachers, farmers, or other persons engaged for them, the direction of such persons may be given to the proper authority of the tribe.

When tribes  
may direct the  
employment of  
blacksmiths, etc.  
June 30, 1834, c.  
162, s. 9, v. 4, p.  
737.  
Sec. 2072, R. S.

**1403.** That the Secretary of War be, and he is hereby, authorized to set aside, for use in the establishment of normal and industrial training-schools for Indian youth from the nomadic tribes having educational treaty claims upon the United States, any vacant posts or barracks, so long

Industrial  
training schools  
for Indian youth.  
July 31, 1882, v.  
22, p. 181.

<sup>1</sup> Held (April, 1879) to be at least doubtful whether the authority of the President as Commander in Chief could legally be extended to the ordering of an officer of the Army upon the purely civil duty of instructing Indian youth, unless, indeed, such instruction was to be given by him as a professor of a college, etc., under section 1225, Revised Statutes. Special duties of an exclusively civil character, where intended to be anything more than merely temporary, have in general been devolved upon military officers only by the authority of express legislation—as, for example, in the cases provided for by sections 1225, 2062, 2190, and 4687, Revised Statutes, in which authority has been given by Congress for the employment of officers of the Army as professors, etc., of colleges, Indian agents, and assistants in taking the census (a) and on the coast survey. So, advised, that, if thought expedient to devolve upon military officers the function of the instruction of Indian youth, specific authority be obtained from Congress for the purpose. (b) (Dig. J. A. Gen., 164, par. 8.)

The industrial training school for the Chilocco Indians not being established "at a vacant military post or barracks set aside for its use by the Secretary of War," held that the Secretary would not be authorized to detail an officer of the Army for duty there "in connection with Indian education," under the act of July 3, 1882, chapter 363. (Ibid., 15, par. 11.)

<sup>a</sup> See G. O. 39, Headquarters of Army, 1880.

<sup>b</sup> Congress was accordingly resorted to for authority in this instance, and, by the act of June 23, 1879, chapter 35, section 7, the Secretary of War was specially empowered "to detail an officer of the Army not above the rank of captain for special duty with reference to Indian education." A detail was made accordingly, by S. O. 194, Headquarters of Army, of August 23 following.

as they may not be required for military occupation, and to detail one or more officers of the Army for duty in connection with Indian education, under the direction of the Secretary of the Interior, at each such school so established: *Provided*, That moneys appropriated or to be appropriated for general purposes of education among the Indians may be expended, under the direction of the Secretary of the Interior, for the education of Indian youth at such posts, institutions, and schools as he may consider advantageous, or as Congress from time to time may authorize and provide. *Act of July 31, 1882 (22 Stat. L., 181).*

**Reports of schools.** **1404.** That the Secretary of the Interior shall report annually, on or before the first Monday of December of each year, in what manner and for what purposes the general education fund for the preceding fiscal year has been expended; and said report shall embrace the number and kind of school-houses erected, and their cost, as well as cost of repairs, names of every teacher employed, and compensation allowed, the location of each school, and the average attendance at each school: *Always provided*, That no part of the money appropriated by this act shall be expended in the transportation from or support of Indian pupils or children off their reservations, respectively, if removed without the free consent of their parents or those standing in that relation to them by their tribal laws respectively. *Act of March 2, 1887 (24 Stat. L., 465).*

**Consent of parent.** **1405.** The Secretary of the Interior shall, under the direction of the President, cause to be discontinued the services of such [agents,] sub-agents, interpreters, and mechanics, as may from time to time become unnecessary, in consequence of the [immigration] [emigration] of the Indians, or other causes.

**Discontinuance of the offices of subagents, interpreters, etc.** **1406.** No person shall hold more than one office at the same time under this Title, nor shall any agent, sub-agent, interpreter, or person employed under this Title, receive his salary while absent from his agency or employment, without leave of the superintendent, or Secretary of the Interior; but such absence shall at no time exceed sixty days.

**No person to hold two offices: leave of absence.** **1407.** The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs.

**Additional security from disbursing officers, etc.** **1408.** The several compensations prescribed by this Title shall be in full of all emoluments or allowances whatsoever. But where necessary, a reasonable allowance or provision may be made for offices and office contingencies.

**Compensation prescribed to be in full.** **Sec. 2073, R.S.** **1409.** The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs.

**June 30, 1834, c. 162, s. 10, v. 4, p. 737.** **Sec. 2074, R.S.** **1410.** The President may, from time to time, require additional security, and in larger amounts, from all persons charged or trusted, under the laws of the United States, with the disbursement or application of money, goods, or effects of any kind, on account of Indian affairs.

**1409.** Where persons are required, in the performance of their duties, under this Title, to travel from one place to another, their actual expenses, or a reasonable sum in lieu thereof, may be allowed them, except that no allowance shall be made to any person for travel or expenses in coming to the seat of Government to settle his accounts, unless thereto required by the Secretary of the Interior.

Allowance for traveling expenses.  
June 30, 1834, c. 162, s. 10, v. 4, p. 737.  
Minis v. U. S., 15 Pet., 423.  
Sec. 2017, R. S.

**1410.** No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of five thousand dollars, and shall be removed from his office.<sup>1</sup>

Employees not to trade with the Indians.  
June 30, 1834, c. 162, s. 14, v. 4, p. 738.  
Sec. 2078, R. S.

#### PERFORMANCE OF ENGAGEMENTS BETWEEN THE UNITED STATES AND INDIANS.

**1411.** No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March third, eighteen hundred and seventy-one, shall be hereby invalidated or impaired.

No future treaties with Indian tribes.  
Mar. 3, 1871, c. 120, s. 1, v. 16, p. 566; June 22, 1874, c. 389, s. 3, v. 18, p. 176; June 10, 1876, c. 122, v. 19, p. 58.  
Sec. 2079, R. S.

**1412.** Whenever the tribal organization of any Indian tribe is in actual hostility to the United States, the President is authorized, by proclamation, to declare all treaties with such tribe abrogated by such tribe, if in his opinion the same can be done consistently with good faith and legal and national obligations.

Abrogation of treaties.  
July 5, 1862, c. 135, s. 1, v. 12, p. 528.  
Sec. 2080, R. S.

**1413.** The Secretary of the Treasury is authorized to pay in coin such of the annuities as by the terms of any treaty of the United States with any Indian tribe are required to be paid in coin.

Payment of certain annuities in coin.  
Mar. 3, 1865, c. 127, s. 3, v. 13, p. 561.  
Sec. 2081, R. S.

**1414.** The President may, at the request of any Indian tribe, to which any annuity is payable in money, cause the same to be paid in goods, purchased as provided in the next section.

Payment of annuities in goods.  
June 30, 1834, c. 162, s. 12, v. 4, p. 737.  
Sec. 2082, R. S.

**1415.** All merchandise required by any Indian treaty for the Indians, payable after making of such treaty, shall be purchased under the direction of the Secretary of the Interior, upon proposals to be received, to be based on notices previously to be given; and all merchandise required at the making of any Indian treaty shall be purchased under the order of the Commissioner of Indian Affairs by such person

Purchase of goods for the Indians.  
June 30, 1834, c. 162, s. 13, v. 4, p. 737; June 22, 1874, c. 389, v. 18, p. 176; Mar. 3, 1875, c. 132, s. 7, v. 18, p. 450; Aug. 15, 1876, c. 239, v. 19, p. 196.  
Sec. 2083, R. S.

<sup>1</sup>For statutes authorizing allotments of land in severalty to Indians, see the acts of February 8, 1887 (24 Stat. L., 388); section 2, act of March 2, 1889 (25 Stat. L., 998); Feb. 28, 1891 (26 Stat. L., 795); May 30, 1894 (28 Stat. L., 84); and March 2, 1895, *ibid.*, 894.

as he shall appoint. All other purchases on account of the Indians, and all payments to them of money or goods, shall be made by such person as the President shall designate for that purpose.

Manner of purchase.

July 5, 1862, c. 135, s. 5, v. 12, p. 529.

Sec. 2084, R. S.

**1416.** No goods shall be purchased by the Office of Indian Affairs, or its agents, for any tribe, except upon the written requisition of the superintendent in charge of the tribe, and only upon public bids in the mode prescribed by the preceding section.

Claims for supplies.

July 15, 1870, c. 296, s. 2, v. 16, p. 360.

Sec. 2085, R. S.

**1417.** No claims for supplies for Indians, purchased without authority of law, shall be paid out of any appropriation for expenses of the Office of Indian Affairs, or for Indians.

Modes of paying annuities and distributing goods.

June 30, 1834, c. 162, s. 11, v. 4, p. 737; Mar. 3, 1847, c. 66, s. 3, v. 9, p. 203; Aug. 30, 1852, c. 103, s. 3, v. 10, p. 56; July 15, 1870, c. 296, ss. 2, 3, v. 16, p. 360; Mar. 3, 1875, c. 132, s. 6, v. 18, p. 450; Aug. 15, 1876, c. 289, v. 19, p. 196.

Sec. 2086, R. S.

**1418.** The payment of all moneys and the distribution of all goods stipulated to be furnished to any Indians, or tribe of Indians, shall be made in one of the following ways, as the President or the Secretary of the Interior may direct:

First. To the chiefs of a tribe, for the tribe.

Second. In cases where the imperious interest of the tribe or the individuals intended to be benefited, or any treaty stipulation, requires the intervention of an agency, then to such person as the tribe shall appoint to receive such moneys or goods; or if several persons be appointed, then upon the joint order or receipt of such persons.

Third. To the heads of the families and to the individuals entitled to participate in the moneys or goods.

Fourth. By consent of the tribe, such moneys or goods may be applied directly, under such regulations, not inconsistent with treaty stipulations, as may be prescribed by the Secretary of the Interior, to such purposes as will best promote the happiness and prosperity of the members of the tribe, and will encourage able-bodied Indians in the habits of industry and peace.

Withholding of annuities from intoxicated persons.

Mar. 3, 1847, c. 66, s. 3, v. 9, p. 203;

Sec. 2087, R. S.

**1419.** No annuities, or moneys, or goods, shall be paid or distributed to Indians while they are under the influence of any description of intoxicating liquor, nor while there are good and sufficient reasons leading the officers or agents, whose duty it may be to make such payments or distribution, to believe that there is any species of intoxicating liquor within convenient reach of the Indians, nor until the chiefs and head-men of the tribe shall have pledged themselves to use all their influence and to make all proper exertions to prevent the introduction and sale of such liquor in their country.

Army officer to be present at delivery of annuities.

**1420.** The superintendent, agent, or sub-agent, together with such military officer as the President may direct, shall

be present, and certify to the delivery of all goods and money required to be paid or delivered to the Indians.

June 30, 1834, c. 162, s. 13, v. 4, p. 737.  
 Minis v. U. S.,  
 15 Pet., 423. Sec. 2088, R. S.  
 Mode of disbursements.  
 Mar. 3, 1857, c. 90, s. 1, v. 11, p. 169.  
 Sec. 2089, R. S.

**1421.** At the discretion of the President all disbursements of moneys, whether for annuities or otherwise, to fulfill treaty stipulations with individual Indians or Indian tribes, shall be made in person by the superintendents of Indian affairs, where superintendencies exist, to all Indians or tribes within the limits of their respective superintendencies, in the presence of the local agents and interpreters, who shall witness the same, under such regulations as the Secretary of the Interior may direct.

**1422.** That for the purpose of inducing Indians to labor and become self-supporting, it is provided that hereafter, in distributing the supplies and annuities to the Indians for whom the same are appropriated, the agent distributing the same shall require all able-bodied male Indians between the ages of eighteen and forty-five to perform service upon the reservation, for the benefit of themselves or of the tribe, at a reasonable rate, to be fixed by the agent in charge, and to an amount equal in value to the supplies to be delivered; and the allowances provided for such Indians shall be distributed to them only upon condition of the performance of such labor, under such rules and regulations as the agent may prescribe: *Provided*, That the Secretary of the Interior may, by written order, except any particular tribe, or portion of tribe, from the operation of this provision where he deems it proper and expedient.

Labor required from Indians on reservations to amount of supplies.

Sec. 3, Mar. 3, 1875, v. 18, p. 449.

Exceptions from labor rule.

**1423.** That hereafter, for the purpose of properly distributing the supplies appropriated for the Indian service, it is hereby made the duty of each agent in charge of Indians and having supplies to distribute, to make out, at the commencement of each fiscal year, rolls of the Indians entitled to supplies at the agency, with the names of the Indians and of the heads of families or lodges, with the number in each family or lodge, and to give out supplies to the heads of families, and not to the heads of tribes or bands, and not to give out supplies for a greater length of time than one week in advance. *Sec. 4, ibid.*

Rolls of Indians entitled to supplies.  
 Sec. 4, *ibid.*

Supplies, how given out.

**1424.** Whenever goods and merchandise are delivered to the chiefs of a tribe, for the tribe, such goods and merchandise shall be turned over by the agent or superintendent of such tribe to the chiefs in bulk, and in the original package, as nearly as practicable, and in the presence of the head-men of the tribe, if practicable, to be distributed

Mode of distribution of goods.  
 Apr. 10, 1839, c. 16, s. 2, v. 16, p. 39.  
 Sec. 2090, R. S.

to the tribe by the chiefs in such manner as the chiefs may deem best, in the presence of the agent or superintendent.

Annual accounts of disbursements, etc.

June 30, 1834, c. 162, s. 13, v. 4, p. 737; Mar. 3, 1875, c. 132, s. 8, v. 18, p. 450.

Sec. 2091, R. S.

**1425.** All persons whatsoever, charged or trusted with the disbursement or application of money, goods, or effects of any kind for the benefit of the Indians, shall settle their accounts, annually, at the Department of the Interior on the first day of October; and copies of the same shall be laid before Congress at the commencement of the ensuing session, by the proper accounting officers; together with a list of the names of all persons to whom money, goods, or effects have been delivered within the preceding year, for the benefit of the Indians, specifying the amount and object for which they were intended, and showing who are delinquents, if any, in forwarding their accounts according to the provisions of this section; and, also, with a list of the names of all persons appointed or employed under this Title, with the dates of their appointment or employment, and the salary and pay of each.<sup>1</sup>

Sales of cattle; penalty.

July 4, 1884, v. 23, p. 94.

**1426.** That where Indians are in possession or control of cattle or their increase which have been purchased by the Government such cattle shall not be sold to any person not a member of the tribe to which the owners of the cattle belong or to any citizen of the United States whether intermarried with the Indians or not except with the consent in writing of the agent of the tribe to which the owner or possessor of the cattle belongs. And all sales made in violation of this provision shall be void and the offending purchaser on conviction thereof shall be fined not less than five hundred dollars and imprisoned not less than six months. *Act of July 4, 1884 (23 Stat. L., 94).*

Restriction on advances to superintendents, etc.

June 27, 1846, c. 34, s. 1, v. 9, p. 20.

Sec. 2092, R. S.

**1427.** No superintendent of Indian affairs, or Indian agent, or other disbursing officer in such service, shall have advanced to him, on Indian or public account, any money to be disbursed in future, until such superintendent, agent, or officer in such service has settled his accounts of the

<sup>1</sup> Section 8 of the act of July 4, 1884 (23 Stat. L., 97), provides, that any disbursing or other officer of the United States, or other person, who shall knowingly present, or cause to be presented, any voucher, account, or claim to any officer of the United States, for approval or payment, or for the purpose of securing a credit in any account with the United States, relating to any matter pertaining to the Indian service, which shall contain any material misrepresentation of fact in regard to the amount due or paid, the name or character of the article furnished or received, or of the service rendered, or to the date of purchase, delivery, or performance of service, or in any other particular, shall not be entitled to payment or credit for any part of said voucher, account, or claim; and if any such credit shall be given or received, or payment made, the United States may recharge the same to the officer or person receiving the credit or payment, and recover the amount from either or from both, in the same manner as other debts due the United States are collected: *Provided*, That where an account contains more than one voucher the foregoing shall apply only to such vouchers as contain the misrepresentation: *And provided further*, That the officers and persons by and between whom the business is transacted shall, in all civil actions in settlement of accounts, be presumed to know the facts in relation to the matter set forth in the voucher, account, or claim: *And provided further*, That the foregoing shall be in addition to the penalties now prescribed by law, and in no way affect proceedings under existing law for like offenses. That where practicable this section shall be printed on the blank forms of vouchers provided for general use.

preceding year, and has satisfactorily shown that all balances in favor of the Government, which may appear to be in his hands, are ready to be paid over on the order of the Secretary of the Interior.

**1428.** No funds belonging to any Indian tribe with which treaty relations exist shall be applied in any manner not authorized by such treaty, or by express provisions of law; nor shall money appropriated to execute a treaty be transferred or applied to any other purpose, unless expressly authorized by law.

Misapplication of funds.

July 26, 1866, c. 266, s. 2, v. 14, p. 280.

Sec. 2097, R. S.

**1429.** No part of the moneys which may be appropriated in any general act or deficiency bill making appropriations for the current and contingent expenses incurred in Indian affairs, to pay annuities due to or to be used and expended for the care and benefit of any tribe or tribes of Indians, shall be applied to the payment of any claim for depredations that may have been or may be committed by such tribe or tribes, or any member or members thereof. No claims for Indian depredations shall be paid until Congress shall make special appropriation therefor.

Indian depredation claims; annuities.

July 15, 1870, c. 296, s. 4, v. 16, p. 360.

Sec. 2098, R. S.

**1430.** No moneys which may be appropriated for the purposes of education among the Indian tribes shall be expended for any such object elsewhere than in Indian country. But this provision shall not apply to appropriations the expenditure of which is authorized by treaty stipulations, to be made under the direction either of the President or of the Indian tribes, respectively.

Funds for education.

July 29, 1848, c. 118, s. 2, v. 9, p. 264.

Sec. 2099, R. S.

**1431.** No moneys or annuities stipulated by any treaty with an Indian tribe for which appropriations are made shall be expended for, or paid, or delivered to any tribe which, since the next preceding payment under such treaty, has engaged in hostilities against the United States, or against its citizens peacefully or lawfully sojourning or traveling within its jurisdiction at the time of such hostilities; nor in such case shall such stipulated payments or deliveries be resumed until new appropriations shall have been made therefor by Congress. And the Commissioner of Indian Affairs shall report to Congress, at each session, any case of hostilities, by any tribe with which the United States has treaty stipulations, which has occurred since his next preceding report.<sup>1</sup>

Annuities to hostile Indians.

Mar. 2, 1867, c. 173, s. 2, v. 14, p. 515.

Sec. 2100, R. S.

**1432.** No delivery of goods or merchandise shall be made to the chiefs of any tribe, by authority of any treaty, if such chiefs have violated the stipulations contained in such treaty upon their part.<sup>1</sup>

Goods withheld from chiefs who have violated treaty stipulations.

Apr. 10, 1869, c. 16, s. 2, v. 16, p. 39.

Sec. 2101, R. S.

<sup>1</sup>Section 2 of the act of March 3, 1875 (18 Stat. L., 449), provides that no money appropriated for the Indian service shall be paid to any band of Indians while said band, or any portion thereof, is at war with the United States.



Moneys due Indians holding American captives.

May 15, 1870, Res. No. 62, s. 3, v. 16, p. 377.

Sec. 2102, R. S.

**1433.** The Secretary of the Interior shall withhold from any tribe of Indians who may hold American captives, any moneys due them from the United States, until such captives have been surrendered to the lawful authorities of the United States.

Contracts with the Indians.

Mar. 3, 1871, c. 120, s. 3, v. 16, p. 570; May 21, 1872, c. 177, ss. 1, 2, v. 17, p. 136; Apr. 29, 1874, c. 135, v. 18, p. 35; Mar. 3, 1875, c. 132, s. 9, v. 18, p. 450.

Sec. 2103, R. S.

**1434.** No agreement shall be made by any person with any tribe of Indians, or individual Indians not citizens of the United States, for the payment or delivery of any money or other thing of value, in present or in prospective, or for the granting or procuring any privilege to him, or any other person in consideration of services for said Indians relative to their lands, or to any claims growing out of, or in reference to, annuities, installments, or other moneys, claims, demands, or thing, under laws or treaties with the United States, or official acts of any officers thereof or in any way connected with or due from the United States, unless such contract or agreement be executed and approved as follows:

First. Such agreement shall be in writing, and a duplicate of it delivered to each party.

Second. It shall be executed before a judge of a court of record, and bear the approval of the Secretary of the Interior and the Commissioner of Indian Affairs indorsed upon it.

Third. It shall contain the names of all parties in interest, their residence and occupation; and if made with a tribe, by their tribal authorities, the scope of authority and the reason for exercising that authority, shall be given specifically.

Fourth. It shall state the time when and place where made, the particular purpose for which made, the special thing or things to be done under it, and, if for the collection of money, the basis of the claim, the source from which it is to be collected, the disposition to be made of it when collected, the amount or rate per centum of the fee in all cases; and if any contingent matter or condition constitutes a part of the contract or agreement, it shall be specifically set forth.

Fifth. It shall have a fixed limited time to run, which shall be distinctly stated.

Sixth. The judge before whom such contract or agreement is executed shall certify officially the time when and place where such contract or agreement was executed, and that it was in his presence, and who are the interested parties thereto, as stated to him at the time; the parties present making the same; the source and extent of authority

claimed at the time by the contracting parties to make the contract or agreement, and whether made in person or by agent or attorney of either party or parties.

All contracts or agreements made in violation of this section shall be null and void, and all money or other thing of value paid to any person by any Indian or tribe, or any one else, for or on his or their behalf, on account of such services, in excess of the amount approved by the Commissioner and Secretary for such services, may be recovered by suit in the name of the United States in any court of the United States, regardless of the amount in controversy; and one-half thereof shall be paid to the person suing for the same, and the other half shall be paid into the Treasury for the use of the Indian or tribe by or for whom it was so paid.

**1435.** No money shall be paid to any agent or attorney by an officer of the United States under any such contract or agreement, other than the fees due him for services rendered thereunder; but the moneys due the tribe, Indian, or Indians, as the case may be, shall be paid by the United States, through its own officers or agents, to the party or parties entitled thereto; and no money or thing shall be paid to any person for services under such contract or agreement, until such person shall have first filed with the Commissioner of Indian Affairs a sworn statement, showing each particular act of service under the contract, giving date and fact in detail, and the Secretary of the Interior and Commissioner of Indian Affairs shall determine therefrom whether, in their judgment, such contract or agreement has been complied with or fulfilled; if so, the same may be paid, and, if not, it shall be paid in proportion to the services rendered under the contract.

Payments under contracts restricted.

May 21, 1872, c. 177, s. 2, v. 17, p. 136; Apr. 29, 1874, c. 135, v. 18, p. 35. Sec. 2104, R. S.

**1436.** The person so receiving such money contrary to the provisions of the two preceding sections, and his aiders and abettors, shall, in addition to the forfeiture of such sum, be punishable by imprisonment for not less than six months, and by a fine of not less than one thousand dollars. And it shall be the duty of all district attorneys to prosecute such cases when applied to to do so, and their failure and refusal shall be ground for their removal from office. Any Indian agent, or other person in the employment of the United States, who shall, in violation of the provisions of the preceding section, advise, sanction, or in any way aid in the making of such contracts or agreements, or in making such payments as are here prohibited, shall, in addition to the punishment herein imposed on the person

The same; penalty.

Mar. 3, 1871, c. 120, s. 3, v. 16, p. 570. Sec. 2105, R. S.

making such contract, or receiving such money, be, on conviction, dismissed from the service of the United States, and be forever disqualified from holding any office of profit or trust under the same.

Assignments  
of contracts re-  
stricted.

May 21, 1872, c.  
177, s. 2, v. 17, p.  
136; Apr. 29, 1874,  
c. 135, v. 18, p. 35.  
Sec. 2106, R. S.

**1437.** No assignment of any contracts embraced by section twenty-one hundred and three, or of any part of one shall be valid, unless the names of the assignees and their residences and occupations be entered in writing upon the contract, and the consent of the Secretary of the Interior and the Commissioner of Indian Affairs to such assignment be also indorsed thereon.

The same.  
Mar. 3, 1871, c.  
120, s. 1, v. 16, p.  
568.  
Sec. 2107, R. S.

**1438.** No payments shall be made by any officer of the United States to contractors for goods or supplies of any sort furnished to the Indians, or for the transportation thereof, or for any buildings or machinery erected or placed on their reservations, under or by virtue of any contract entered into with the Department of the Interior, or any branch thereof, on the receipts or certificates of the Indian agents or superintendents for such supplies, goods, transportation, buildings, or machinery beyond fifty per cent. of the amount due, until the accounts and vouchers shall have been submitted to the executive committee of the board of Indian commissioners appointed by the President for examination, revisal, and approval; and such board of commissioners shall, without unnecessary delay, forward the accounts and vouchers so submitted to them to the Secretary of the Interior, with the reasons for their approval or disapproval of the same, in whole or in part, attached thereto; and the Secretary shall have power to sustain, set aside, or modify the action of the board, and cause payment to be made or withheld, as he may determine.

Moneys due  
incompetent or  
orphan Indians.  
July 5, 1862, c.  
135, s. 6, v. 12, p.  
529.  
Sec. 2108, R. S.

**1439.** The Secretary of the Interior is directed to cause settlements to be made with all persons appointed by Indian councils to receive moneys due to incompetent or orphan Indians, and to require all moneys found due to such incompetent or orphan Indians to be returned to the Treasury; and all moneys so returned shall bear interest at the rate of six per centum per annum, until paid by order of the Secretary of the Interior to those entitled to the same. No money shall be paid to any person appointed by any Indian council to receive moneys due to incompetent or orphan Indians, but the same shall remain in the Treasury of the United States until ordered to be paid by the Secretary to those entitled to receive the same, and shall bear six per centum interest until so paid.

**1440.** Whenever the issue of food, clothing, or supplies of any kind to Indians is provided for, it shall be the duty of the agent or commissioner issuing the same, at such issue thereof, whether it be both of food and clothing, or either of them, or of any kind of supplies, to report to the Commissioner of Indian Affairs the number of Indians present and actually receiving the same.

Number of Indians present at issues to be reported.  
Feb. 14, 1873, c. 138, s. 7, v. 17, pp. 463, 464.  
Sec. 2109, R. S.

**1441.** The President is authorized to cause such rations as he deems proper, and as can be spared from the Army provisions without injury to the service, to be issued, under such regulations as he shall think fit to establish, to Indians who may visit the military posts or agencies of the United States on the frontiers, or in their respective nations; and a special account of these issues shall be kept and rendered.

Army rations for Indians.  
June 30, 1834, c. 162, s. 16, v. 4, p. 738; June 22, 1874, c. 389, s. 3, v. 18, p. 176.  
Sec. 2110, R. S.

#### GOVERNMENT AND PROTECTION OF INDIANS.

**1442.** Every person who sends any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace and tranquillity of the United States, is liable to a penalty of two thousand dollars.

Sending seditious messages; penalty.  
June 30, 1834, c. 161, s. 13, v. 4, p. 731.  
Sec. 2111, R. S.

**1443.** Every person who carries or delivers any talk, message, speech, or letter, intended to produce a contravention or infraction of any treaty or law of the United States, or to disturb the peace or tranquillity of the United States, knowing the contents thereof, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, is liable to a penalty of one thousand dollars.

Carrying seditious messages; penalty.  
June 30, 1834, c. 161, s. 14, v. 4, p. 731.  
Sec. 2112, R. S.

**1444.** Every person who carries on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or who alienates, or attempts to alienate, the confidence of any Indian or Indians from the Government of the United States, is liable to a penalty of one thousand dollars.

Correspondence with foreign nations, to excite Indians to war; penalty.  
June 30, 1834, c. 161, s. 15, v. 4, p. 731.  
Sec. 2113, R. S.

**1445.** The President is authorized to exercise general superintendence and care over any tribe or nation which was removed upon an exchange of territory under authority of the act of May twenty-eighth, eighteen hundred and thirty, "to provide for an exchange of lands with the

General superintendence by the President over tribes removed west of the Mississippi.  
May 28, 1830, c. 148, ss. 7, 8, v. 4, p. 412.  
Sec. 2114, R. S.

Indians residing in any of the States or Territories, and for their removal west of the Mississippi;" and to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.<sup>1</sup>

Survey of Indian reservations.

Apr. 8, 1864, c. 48, s. 6, v. 13, p. 41.  
Sec. 2115, R. S.

**1446.** Whenever it becomes necessary to survey any Indian or other reservations, or any lands, the same shall be surveyed under the direction and control of the General Land-Office, and as nearly as may be in conformity to the rules and regulations under which other public lands are surveyed.

White men marrying Indian women not to acquire tribal rights.

Aug. 9, 1888, v. 25, p. 392.

**1447.** That no white man, not otherwise a member of any tribe of Indians, who may hereafter marry, an Indian woman, member of any Indian tribe in the United States, or any of its Territories except the five civilized tribes in the Indian Territory, shall by such marriage hereafter acquire any right to any tribal property, privilege, or interest whatever to which any member of such tribe is entitled. *Act of August 9, 1888 (25 Stat. L., 392).*

Indian women marrying white men to become citizens.

Sec. 2, *ibid.*

**1448.** That every Indian woman, member of any such tribe of Indians, who may hereafter be married to any citizen of the United States, is hereby declared to become by such marriage a citizen of the United States, with all the rights, privileges, and immunities of any such citizen, being a married woman: *Provided*, That nothing in this act contained shall impair or in any way affect the right or title of such married woman to any tribal property or any interest therein. *Sec. 2, ibid.*

*Proviso.*  
Tribal rights.

Evidence of marriage.

Sec. 3, *ibid.*

**1449.** That whenever the marriage of any white man with any Indian woman, a member of any such tribe of Indians, is required or offered to be proved in any judicial proceeding, evidence of the admission of such fact by the party against whom the proceeding is had, or evidence of general repute, or of cohabitation as married persons, or any other circumstantial or presumptive evidence from which the fact may be inferred, shall be competent. *Sec. 3, ibid.*

Purchases or grants from Indians.

June 30, 1834, c. 161, s. 12, v. 4, p. 730.

Johnson's Les. sec v. McIntosh, 8 Wh., 543.

Sec. 2116, R. S.

**1450.** No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United

<sup>1</sup> The internal affairs of the Indians were never interfered with by England, and the United States has always recognized them as nations separate from, but dependent upon, us. (*Worcester v. Georgia*, 6 Pet., 515.)

The states can not withdraw Indians within their limits from the operation of the laws of Congress regulating trade with them. (*U. S. v. Holliday*, 3 Wall., 407.)

If the tribal organization is recognized by the National Government as existing, the States can not regard it as gone. (*The Kansas Indians*, 5 Wall., 737.)

States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of one thousand dollars. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty.

**1451.** Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of one dollar for each animal of such stock.

Driving stock to feed on Indian lands.

June 30, 1834, c. 161, s. 9, v. 4, p. 730.

U. S. v. Mattock, 2 Saw., 148.  
Sec. 2117, R.S.

**1452.** Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or otherwise, is liable to a penalty of one thousand dollars. The President may, moreover, take such measures and employ such military force as may judge necessary to remove any such person from the lands.<sup>1</sup>

Settling on or surveying lands belonging to Indians by treaty.

June 30, 1834, c. 161, s. 11, v. 4, p. 730.

Sec. 2118, R.S.

**1453.** Whenever any Indian, being a member of any band or tribe with whom the Government has or shall have entered into treaty stipulations, being desirous to adopt the habits of civilized life, has had a portion of the lands belonging to his tribe allotted to him in severalty, in pursuance of such treaty stipulations, the agent and superintendent of such tribe shall take such measures, not inconsistent with law, as may be necessary to protect such Indian in the quiet enjoyment of the lands so allotted to him.

Protection of Indians desiring civilized life.

June 14, 1862, c. 101, s. 1, v. 12, p. 427.

Sec. 2119, R.S.

**1454.** That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or

Citizenship to be accorded to allottees and Indians adopting civilized life.

Sec. 9, Feb. 8, 1887, v. 24, p. 390.

<sup>1</sup> Worcester v. Georgia, 6 Pet., 515; Clark v. Smith, 13 Pet., 195; Lattimer v. Poteet, 14 Pet., 4; Lowry v. Weaver, 4 McLean, 82.

treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property. *Sec. 6, act of February 8, 1887 (24 Stat. L., 390).*

Indians trespassing upon lands of civilized Indians.

June 14, 1862, c. 101, s. 2, v. 12, p. 427.

Sec. 2120, R. S.

**1455.** Whenever any person of Indian blood belonging to a band or tribe which receives or is entitled to receive annuities from the United States, and who has not adopted the habits and customs of civilized life, and received his lands in severalty by allotment, as mentioned in the preceding section, commits any trespass upon the lands or premises of any Indian who has so received his lands by allotment, the superintendent and agent of such band or tribe shall ascertain the damages resulting from such trespass, and the sum so ascertained shall be withheld from the payment next thereafter to be made, either to the band or tribe to which the party committing such trespass shall belong, as in the discretion of the superintendent he shall deem proper; and the sum so withheld shall, if the Secretary of the Interior approves, be paid over by the agent or superintendent to the party injured.

Suspension of chief for trespass.

June 14, 1862, c. 101, s. 3, v. 12, p. 427.

Sec. 2121, R. S.

**1456.** Whenever such trespasser as is mentioned in the preceding section is the chief or head-man of a band or tribe, the superintendent of Indian affairs in his district shall also suspend the trespasser from his office for three months, and shall during that time deprive him of all the benefits and emoluments connected therewith; but the chief or head-man may be sooner restored to his former standing if the superintendent shall so direct.

Sale of buildings belonging to the United States.

Mar. 3, 1843, c. 78, s. 1, v. 5, p. 611.

Sec. 2122, R. S.

**1457.** The Secretary of the Interior is authorized to cause all such buildings belonging to the United States, as have been, or hereafter shall be, erected for the use of their agents, teachers, farmers, mechanics, and other persons employed amongst the Indians, to be sold whenever the lands on which same are erected have become the property of the United States, and are no longer necessary for such purposes.

Sale of lands with buildings.

Mar. 3, 1843, c. 78, s. 2, v. 5, p. 611.

Sec. 2123, R. S.

**1458.** The Secretary of the Interior is authorized to cause to be sold, at his discretion, with each of such buildings as are mentioned in the preceding section, a quantity of land

not exceeding one section; and on the payment of the consideration agreed for into the Treasury of the United States by the purchaser, the Secretary shall make, execute, and deliver to the purchaser a title in fee-simple for such lands and tenements.

**1459.** All penalties which shall accrue under this Title<sup>1</sup> shall be sued for and recovered in an action in the nature of an action of debt, in the name of the United States, before any court having jurisdiction of the same, in any State or Territory in which the defendant shall be arrested or found, the one-half to the use of the informer and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

Penalties, how recovered.  
June 30, 1834, c. 161, s. 27, v. 4, p. 733.  
Sec. 2124, R. S.

**1460.** When goods or other property shall be seized for any violation of this Title, it shall be lawful for the person prosecuting on behalf of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

Proceedings against goods.  
June 30, 1834, c. 161, s. 28, v. 4, p. 734.  
Sec. 2125, R. S.

**1461.** In all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

Burden of proof.  
June 30, 1834, c. 161, s. 22, v. 4, p. 733.  
Sec. 2126, R. S.

#### GOVERNMENT OF INDIAN COUNTRY.<sup>2</sup>

**1462.** The agent of each tribe of Indians, lawfully residing in the Indian country, is authorized to sell for the benefit of such Indians any cattle, horses, or other live

Sale of cattle, etc., of the Indians by agents.  
Mar. 3, 1865, c. 127, s. 9, v. 13, p. 563.  
Sec. 2127, R. S.

<sup>1</sup>Title XXVIII, Revised Statutes.

<sup>2</sup>The term "Indian country" contained in section 1 of the act of June 30, 1834 (4 Stat. L., 79), though not incorporated in the Revised Statutes, and though repealed simultaneously with their enactment, may be referred to in order to determine what is meant by the term when used in statutes; and it applies to all the country to which the Indian title has not been extinguished within the limits of the United States, whether within a reservation or not, and whether acquired before or since the passage of that act. *Ex parte Crow Dog*, 109 U. S., 556; *Bates v. Clark*, 95 U. S., 204.

*Held* (October, 1877) that the term "Indian country," as employed in the statutes regulating trade and intercourse with the Indians (see, particularly, Ch. IV, Title XXVIII, Rev. Stat.), might properly be defined in general as including the following territory, viz: Indian reservations occupied by Indian tribes; other districts so occupied to which the Indian title has not been extinguished; any districts not in other respects Indian country over which the operation of those statutes may be extended by treaty or act of Congress. (a) (*Dig. J. A. Gen.*, 450, par. 1.)

a See this opinion as adopted and incorporated in G. O. 97, Headquarters of Army, 1877; also, in the same connection, 14 Opins. Att. Gen., 290; *United States v. Forty-three Gallons of Whisky*, 3 Otto, 188; *Bates v. Clark*, 5 id., 204; *United States v. Seveloff*, 2 Sawyer, 311. That, in view of the act of March 3, 1873, extending to it certain provisions of the act of June 30, 1834, the Territory of Alaska is "Indian country," so far as concerns the introduction and disposition of spirituous liquor, and that persons violating such provisions may therefore be arrested by military force. See *In re Carr*, 3 Sawyer, 316; also citation from same case in note to ALASKA, § 2, and 14 Opins. Att. Gen., 327.



stock belonging to the Indians, and not required for their use and subsistence, under such regulations as shall be established by the Secretary of the Interior. But no such sale shall be made so as to interfere with the execution of any order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops.

Trading with  
Indians.

July 26, 1866, c.  
266, s. 4, v. 14, p.  
280.

Sec. 2128, R. S.

**1463.** Any loyal person, a citizen of the United States, of good moral character, shall be permitted to trade with any Indian tribe upon giving bond to the United States in the penal sum of not less than five nor more than ten thousand dollars, with at least two good sureties, to be approved by the superintendent of the district within which such person proposes to trade, or by the United States district judge or district attorney for the district in which the obligor resides, renewable each year, conditioned that such person will faithfully observe all laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same.

License to  
trade.

June 30, 1834, c.  
161, s. 2, v. 4, p.  
729.

U. S. v. Cisma, 1  
McLean, 254.

Sec. 2129, R. S.

**1464.** No person shall be permitted to trade with any of the Indians in the Indian country without a license therefor from a superintendent of Indian affairs, or Indian agent, or sub-agent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi, and not exceeding three years for the tribes west of that river.<sup>1</sup>

Refusal of li-  
cense.

June 30, 1834, c.  
161, s. 3, v. 4, p.  
729.

Sec. 2130, R. S.

**1465.** Any superintendent or agent may refuse an application for a license to trade, if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or the superintendent to the Commissioner of Indian Affairs.

Revocation of  
license.

June 30, 1834, c.  
161, s. 2, v. 4, p.  
729.

Sec. 2131, R. S.

**1466.** The superintendent of the district shall have power to revoke and cancel any license to trade within the Indian country whenever the person licensed has, in his opinion, transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or whenever, in his opinion, it is improper to permit such person to remain in the Indian country. No trade with the tribes shall be carried on within their boundary, except at certain suitable and convenient places, to be designated from time to time by the superintendents,

<sup>1</sup> The Secretary of War has no general authority to license trade with Indians in the Indian country. By section 2129, Revised Statutes, such licenses can be given only by a "superintendent of Indian affairs, Indian agent, or subagent." (Dig. J. A. Gen., p. 448, par. 1.)

agents, and sub-agents, and to be inserted in the license. The persons granting or revoking such licenses shall forthwith report the same to the Commissioner of Indian Affairs, for his approval or disapproval.

**1467.** The President is authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all applications therefor to be rejected. No trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

Prohibition of trade by the President.  
June 30, 1834, c. 161, s. 3, v. 4, p. 729.  
Sec. 2132, R. S.

**1468.** Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservation, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of five hundred dollars: *Provided*, That this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the five civilized tribes, residing in said Indian country, and belonging to the Union Agency therein: *And provided further*, That no white person shall be employed as a clerk by any Indian trader, except such as trade with said five civilized tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. *Act of July 31, 1882 (22 Stat. L., 179).*

Penalty for trading without a license.  
June 30, 1834, c. 161, s. 4, v. 4, p. 729; July 31, 1882, c. 360, v. 22, p. 179.  
Sec. 2133, R. S.

**1469.** Every foreigner who shall go into the Indian country without a passport from the Department of the Interior, superintendent, agent, or sub-agent of Indian affairs, or officer of the United States commanding the nearest military post on the frontiers, or who shall remain intentionally therein after the expiration of such passport, shall be liable to a penalty of one thousand dollars. Every such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel.

Penalty for foreigners entering Indian country without passports.  
June 30, 1834, c. 161, s. 6, v. 4, p. 730.  
Sec. 2134, R. S.

**1470.** Every person, other than an Indian, who, within the Indian country, purchases or receives of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in hunting, any instrument of husbandry, or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people,

Prohibited purchases and sales.  
June 30, 1834, c. 161, s. 7, v. 4, p. 730.  
Sec. 2135, R. S.

or any article of clothing, except skins or furs, shall be liable to a penalty of fifty dollars.

Trading or selling arms, etc., in any district occupied by uncivilized or hostile Indians; penalty.

Feb. 14, 1873, c. 138, s. 1, v. 17, p. 459; Aug. 5, 1876, J. R. No. 20, v. 19, p. 216.

Sec. 2136, R. S.

Prohibition of hunting on Indian lands.

June 30, 1834, c. 161, s. 8, v. 4, p. 730.

Sec. 2137, R. S.

Penalty for removing cattle from Indian country.

Mar. 3, 1865, c. 127, s. 8, v. 13, p. 563.

Sec. 2138, R. S.

Introduction of intoxicating liquors into Indian country forbidden.

July 23, 1892, v. 27, p. 260.

Sec. 2139, R. S.

Penalty.

Authority from War Department.

Complaints.

1471. If any trader, his agent, or any person acting for or under him, shall sell any arms or ammunition at his trading-post or other place within any district or country occupied by uncivilized or hostile Indians, contrary to the rules and regulations of the Secretary of the Interior, such trader shall forfeit his right to trade with the Indians, and the Secretary shall exclude such trader, and the agent, or other person so offending, from the district or country so occupied.

1472. Every person, other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of five hundred dollars.

1473. Every person who drives or removes, except by authority of an order lawfully issued by the Secretary of War, connected with the movement or subsistence of troops, any cattle, horses, or other stock from the Indian country for the purposes of trade or commerce, shall be punishable by imprisonment for not more than three years, or by a fine of not more than five thousand dollars, or both.<sup>1</sup>

1474. No ardent spirits, ale, beer, wine, or intoxicating liquor or liquors of whatever kind shall be introduced, under any pretense, into the Indian country. Every person who sells, exchanges, gives, barter, or disposes of any ardent spirits, ale, beer, wine, or intoxicating liquors of any kind to any Indian under charge of any Indian superintendent or agent, or introduces or attempts to introduce any ardent spirits, ale, wine, beer, or intoxicating liquor of any kind into the Indian country shall be punished by imprisonment for not more than two years, and by fine of not more than three hundred dollars for each offense. But it shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority in writing from the War Department, or any officer duly authorized thereunto by the War Department. All complaints for the arrest of any person or persons made for violation of any of the provisions of this act shall be made in the county where

<sup>1</sup> See paragraph 1426, *ante*.

the offense shall have been committed, or if committed upon or within any reservation not included in any county, then in any county adjoining such reservation, and, if in the Indian Territory, before the United States court commissioner, or commissioner of the circuit court of the United States residing nearest the place where the offense was committed, who is not for any reason disqualified; but in all cases such arrests shall be made before any United States court commissioner residing in such adjoining county, or before any magistrate or judicial officer authorized by the laws of the State in which such reservation is located to issue warrants for the arrest and examination of offenders by section ten hundred and fourteen of the Revised Statutes of the United States. And all persons so arrested shall, unless discharged upon examination, be held to answer and stand trial before the court of the United States having jurisdiction of the offense.<sup>1</sup> *Act of July 23, 1892 (27 Stat. L., 260).*

Arrests.

Trial.

1475. And no part of section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attache, or employe of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, wines, beer, or any intoxicating beverage whatsoever to any Indian. *Act of July 4, 1884 (23 Stat. L., 94).*

Officers and soldiers not to barter, donate, or furnish liquors to Indians upon reservation.

July 4, 1884, v. 23, p. 94.

1476. If any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of any military post, has reason to suspect or is informed that any white person or Indian is about to introduce or has introduced any spirituous liquor or wine into the Indian country in violation of law, such superintendent, agent, sub-agent, or commanding officer, may cause the boats, stores, packages,

Power of superintendents, post agents, and commanders, etc., to search for concealed liquors.

Mar. 15, 1864, c. 33, v. 13, p. 29.

American Fur Co. v. U. S., 2 Pet., 358.

Sec. 2140, R. S.

<sup>1</sup>The Secretary of War has no general authority to license the introduction of spirituous liquors into the Indian country. Under section 2139, Revised Statutes, and the act of July 23, 1892, chapter 234, amending that section and extending it to beer and other malt liquors, the Secretary of War is without authority to permit the introduction into that country of any spirituous or malt liquors other than such as may be necessary for the use of the Army. (Dig. J. A. Gen., p. 448, par. 2.)

Where an enlisted Indian soldier belongs to a tribe which remains "under the charge of any Indian superintendent or agent," it is an offense under section 2139, Revised Statutes, to sell him spirituous liquor. Otherwise if he be attached to no such tribe and is under no such "charge." (a) (Ibid., par. 3.)

Held that there was no statute of the United States under which the selling of spirituous liquor to Indian soldiers (not under the charge of an Indian agent), stationed on a United States military reservation, by a civilian making the sales off the reservation, could be punished as an offense. (Ibid., par. 4.)

In view of the terms of the act of May 21, 1884, establishing a civil government for Alaska, held that the military authorities could no longer legally issue permits for the introduction of liquors into Alaska under G. O. 57 of 1874; section 14 of that act being deemed impliedly to repeal, as to Alaska, that portion of section 2139, Revised Statutes, which empowered the Secretary of War to authorize such introduction. (b) (Ibid., p. 449, par. 7.)

a U. S. v. Hurshman, 53 Fed. Rep., 543.

b See U. S. v. Nelson, 29 Fed. Rep., 202.

wagons, sleds, and places of deposit of such person to be searched; and if any such liquor is found therein, the same, together with the boats, teams, wagons, and sleds used in conveying the same, and also the goods, packages, and peltries of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and the other half to the use of the United States; and if such person be a trader, his license shall be revoked and his bond put in suit. It shall moreover be the duty of any person in the service of the United States, or of any Indian, to take and destroy any ardent spirits or wine found in the Indian country, except such as may be introduced therein by the War Department. In all cases arising under this and the preceding section Indians shall be competent witnesses.<sup>1</sup>

Penalty for setting up distillery in Indian country.

June 30, 1834, c. 161, s. 21, v. 4, p. 732.

Sec. 2141, R. S.

**1477.** Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of one thousand dollars; and the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same.

Assault; penalty.

Mar. 27, 1854, c. 26, s. 5, v. 10, p. 270.

Sec. 2142, R. S.

**1478.** Every white person who shall make an assault upon an Indian, or other person, and every Indian who shall make an assault upon a white person, within the Indian country, with a gun, rifle, sword, pistol, knife, or any other deadly weapon, with intent to kill or maim the person so assaulted, shall be punishable by imprisonment, at hard labor, for not more than five years, nor less than one year.

Arson.

Mar. 27, 1854, c. 26, s. 4, v. 10, p. 270.

Sec. 2143, R. S.

**1479.** Every white person who shall set fire, or attempt to set fire, to any house, out-house, cabin, stable, or other building, in the Indian country, to whomsoever belonging;

<sup>1</sup> The act of July 4, 1884, provides that no part of section twenty-one hundred and thirty-nine or of section twenty-one hundred and forty of the Revised Statutes shall be a bar to the prosecution of any officer, soldier, sutler or storekeeper, attache, or employee of the Army of the United States who shall barter, donate, or furnish in any manner whatsoever liquors, wines, beer, or any intoxicating beverage whatsoever to any Indian. (23 Stat. L., 76.)

In view of the positive terms of section 2140, Revised Statutes, an officer of the Army not only *may* but *should* "take and destroy any ardent spirits or wine found in the Indian country except such as may be introduced therein by the War Department." The section imposes this as a "duty" upon "any person in the service of the United States," including, of course, military as well as civil officials. *Held*, however, that the authority given by the statute to destroy liquor brought into an Indian reservation did not authorize the destruction by the military of a building, the private property of a citizen, in which the liquor was found stored. (Dig. J. A. Gen., 450, par. 2.)

In view of the duty devolved by section 2140, Revised Statutes, upon "any person in the service of the United States," to take and destroy spirituous liquors in the Indian country, *held* that a post commander in such country who seized and destroyed a quantity of such liquors introduced into such country without the authority of the Secretary of War, *but not found within the limits of his military command*, had not exceeded his powers. (Ibid., par. 4.)

and every Indian who shall set fire to any house, out-house, cabin, stable, or other building, in the Indian country, in whole or in part belonging to or in lawful possession of a white person, and whether the same be consumed or not, shall be punishable by imprisonment at hard labor for not more than twenty-one years, nor less than two years.

**1480.** The general laws of the United States defining and prescribing punishments for forgery and for depredations upon the mails, shall extend to the Indian country.

Forgery and depredations on mails.

Mar. 3, 1855, c. 204, s. 8, v. 10, p. 700.

Sec. 2144, R. S.

**1481.** Except as to crimes the punishment of which is expressly provided for in this title, the general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.<sup>1</sup>

General laws respecting crimes extended to Indian country.

June 30, 1834, c. 161, s. 25, v. 4, p. 733; Mar. 27, 1854, c. 26, s. 3, v. 10, p. 270. U. S. v. Rogers, 4 How., 567.

Sec. 2145, R. S.

**1482.** The preceding section shall not be construed to extend to crimes committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.<sup>2</sup>

Exceptions to the operation of the preceding sections.

Mar. 27, 1854, c. 26, s. 3, v. 10, p. 270; Feb. 18, 1875, c. 80, v. 18, p. 318.

Sec. 2146, R. S.

**1483.** The superintendent of Indian affairs, and the Indian agents and sub-agents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.<sup>3</sup>

Removal of persons.

June 30, 1834, c. 161, s. 10, v. 4, p. 730.

Sec. 2147, R. S.

**1484.** If any person who has been removed from the Indian country shall thereafter at any time return or be found within the Indian country, he shall be liable to a penalty of one thousand dollars.

Penalty for return.

Aug. 18, 1856, c. 128, s. 2, v. 11, p. 80.

Sec. 2148, R. S.

**1485.** The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment

Removal from reservations.

June 12, 1858, c. 155, s. 2, v. 11, p. 332.

Sec. 2149, R. S.

<sup>1</sup>The act of February 15, 1888, provides a penalty for horse stealing, etc., and for robbery and burglary in the Indian Territory (25 Stat. L., c. 10, p. 33). See also act of June 4, 1888 (25 Stat. L., 167), which authorizes any United States marshal to execute process in the Indian Territory.

<sup>2</sup>But see section 9 of the act of March 3, 1835 (23 Stat. L., 385), par. 1496, *post*, which extends the operation of the criminal laws of the United States to certain offenses committed by one Indian against the person or property of another Indian.

<sup>3</sup>Under section 2147, Revised Statutes, authorizing the use of the military in the removal from the Indian country of "persons found therein contrary to law," *held* that the President was authorized to direct that a company of United States troops be stationed in the Indian Territory near the Kansas line to act as a patrol, and to apprehend and return within that line any and all lawless persons, guilty of crimes committed in Kansas, who have escaped from justice into the Indian country. (Dig. J. A. Gen., p. 449, par. 5.)

of the Commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person.

Penalty for timber depredations.  
June 4, 1888, v. 25, p. 166.

Sec. 5388, R. S.

Extended to Indian lands.

1486. Every person who unlawfully cuts, or aids or is employed in unlawfully cutting, or wantonly destroys or procures to be wantonly destroyed, any timber standing upon the land of the United States which, in pursuance of law, may be reserved or purchased for military or other purposes, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under authority of the United States, shall pay a fine of not more than five hundred dollars or be imprisoned not more than twelve months, or both, in the discretion of the court. *Act of June 4, 1888 (25 Stat. L., 166).*

Army officers, etc., prohibited from giving permission to Indians to go into the State of Texas.

Sec. 4, May 11, 1880, v. 21, p. 132.

1487. That all officers and agents of the Army and Indian Bureaus are prohibited, except in a case specially directed by the President, from granting permission in writing or otherwise to any Indian or Indians on any reservation to go into the State of Texas under any pretext whatever; and any officer or agent of the Army or Indian Bureau who shall violate this provision shall be dismissed from the public service. And the Secretary of the Interior is hereby directed and required to take at once such other reasonable measures as may be necessary in connection with said prohibition to prevent said Indians from entering said State. *Sec. 4, act of May 11, 1880 (21 Stat. L., 132).*

Employment of military force in apprehending persons violating the law.

June 30, 1834, c. 161, ss. 21, 23, v. 4, p. 732.

Sec. 2150, R. S.

1488. The military forces of the United States may be employed in such manner and under such regulations as the President may direct—

First. In the apprehension of every person who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law;

Second. In the examination and seizure of stores, packages, and boats, authorized by law;

Third. In preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law;

Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits set up or continued within the Indian country.<sup>1</sup>

<sup>1</sup> Under section 2150, Revised Statutes, a military commander may be authorized and directed by the President to arrest by military force, and deliver to the proper

1489. No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.

Detention of persons apprehended by the military.

Sec. 23, *ibid.*  
Sec. 2151, R. S.

1490. The superintendents, agents, and sub-agents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.<sup>1</sup>

Arrest of absconding Indians guilty of crime.

June 30, 1834, c. 161, s. 19, v. 4, p. 732.  
Sec. 2152, R. S.

1491. In executing process in the Indian country, the marshal may employ a posse comitatus, not exceeding three persons in any of the States respectively, to assist in executing process by arresting and bringing in prisoners from the Indian country, and allow them three dollars for each day in lieu of all expenses and services.

Executing process.

June 14, 1858, c. 163, s. 3, v. 11, p. 363.  
Sec. 2153, R. S.

1492. Whenever, in the commission, by a white person, of any crime, offense, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property so taken, injured, or destroyed.

Reparation for injured property.

June 30, 1834, c. 161, s. 16, v. 4, p. 731.  
Sec. 2154, R. S.

1493. If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian

Payment where the offender is unable to make same.

June 30, 1834, c. 161, s. 16, v. 4, p. 731.  
Sec. 2155, R. S.

civil authorities for trial, any white persons or Indians who may be in the Indian country engaged in furnishing liquor to Indians in violation of law, as also to prevent, by military force, the entry into such country of persons designing to introduce liquor therein contrary to law. *Held* that this authority to prevent was clearly an authority to arrest, where arrests were found necessary to restrain persons attempting to introduce liquor or other inhibited property. (Dig. J. A. Gen., 450, par. 3.)

<sup>1</sup>*Held* that, under section 2152, Revised Statutes, the military forces may, by the authority of the President, be employed to assist in making the arrest of Indians concerned in the killing of cattle and committing of depredations on the frontier, provided their offenses were committed in the Indian country or by Indians under the legal charge of an Indian agent. (Dig. J. A. Gen., 449, par. 6.)

*Held* that, in the execution of process of arrest under the act of March 3, 1835 (rendering Indians amenable to the criminal laws of the Territories), the military may, by direction of the President, legally be employed to aid the civil officials in such arrests, such employment being expressly authorized by section 2152, Revised Statutes. (*Ibid.*, 163, par. 10.)



shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence.

Injuries to property by Indians.

June 30, 1834, c. 161, s. 17, v. 4, p. 731; Feb. 28, 1859, c. 66, s. 8, v. 11, p. 401.

**Sec. 2156, R.S.** 1494. If any Indian, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from Indian country into any State or Territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, or other property belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which such Indian shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time not exceeding twelve months, such superintendent, agent, or sub-agent shall make return of his doings to the Commissioner of Indian Affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury.

Superintendents, etc., authorized to take depositions.

June 30, 1834, c. 161, s. 18, v. 4, p. 732.

**Sec. 2157, R.S.**

Indians committing certain crimes to be subject to laws.

Sec. 9, Mar. 3, 1885, v. 23, p. 385.

Courts given jurisdiction in all such cases.

**1495.** The superintendents, agents, and sub-agents within their respective districts are authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the three preceding sections, and to administer oaths to the deponents.

**1496.** That immediately upon and after the date of the passage of this act all Indians, committing against the person or property of another Indian or other person any of the following crimes, namely, murder, manslaughter, rape, assault with intent to kill, arson, burglary, and larceny within any Territory of the United States, and either within or without an Indian reservation, shall be subject therefor to the laws of such Territory relating to said crimes, and shall be tried therefor in the same courts and in the same manner and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases; and all such Indians committing any of the above crimes against the person or property of another Indian or other person within the boundaries of any State of the United States, and within the limits of any Indian reservation, shall be subject to

the same laws, tried in the same courts and in the same manner, and subject to the same penalties as are all other persons committing any of the above crimes within the exclusive jurisdiction of the United States. *Sec. 9, act of March 3, 1885 (23 Stat. L., 385).*

1497. That any Indian hereafter committing against the person of any Indian agent or policeman appointed under the laws of the United States, or against any Indian United States deputy marshal, posse comitatus, or guard, while lawfully engaged in the execution of any United States process, or lawfully engaged in any other duty imposed upon such agent, policeman, deputy marshal, posse comitatus, or guard by the laws of the United States, any of the following crimes, namely, murder, manslaughter, or assault with intent to murder, assault, or assault and battery, or who shall in any manner obstruct by threats or violence any person who is engaged in the service of the United States in the discharge of any of his duties as agent, policeman, or other officer aforesaid, within the Indian Territory, or who shall hereafter commit either of the crimes aforesaid, in said Indian Territory, against any person who, at the time of the commission of said crime, or at any time previous thereto, belonged to either of the classes of officials hereinbefore named, shall be subject to the laws of the United States relating to such crimes, and shall be tried by the district court of the United States exercising criminal jurisdiction where such offense was committed, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. *Act of June 9, 1888 (25 Stat. L., 178).*

Assault, etc.,  
upon United  
States officials;  
penalty.  
June 9, 1888, v.  
25, p. 178.

Jurisdiction of  
district court.

1498. That after the passage of this act any United States marshal is hereby authorized and required, when necessary to execute any process connected with any criminal proceeding issued out of the circuit or district court of the United States for the district of which he is marshal, or by any commissioner of either of said courts, to enter the Indian Territory, and to execute the same therein in the same manner that he is now required by law to execute like processes in his own district. *Act of June 4, 1888 (25 Stat. L., 167).*

Marshals to ex-  
ecute process in.  
June 4, 1888, v.  
25, p. 167.

#### THE INDIAN POLICE.

1499. Pay of Indian police: For the services of not exceeding four hundred and thirty privates at five dollars per month each, and not exceeding fifty officers at eight dollars per month each, of Indian police, to be employed in

The Indian po-  
lice.  
May 27, 1878, v.  
20, p. 86.

maintaining order and prohibiting illegal traffic in liquor on the several Indian reservations, thirty thousand dollars: *Provided*, That Indians employed at agencies in any capacity shall not be construed as part of agency employees named in section five of the act making appropriations for the Indian service for the fiscal year eighteen hundred and seventy-six, approved March third, eighteen hundred and seventy-five.<sup>1</sup> *Act of May 27, 1878 (20 Stat. L., 86).*

Crimes against  
Indian police to  
be tried in dis-  
trict courts.

Mar. 2, 1887, v.  
24, p. 464.

1500. That immediately upon and after the passage of this act any Indians committing against the person of any Indian policeman appointed under the laws of the United States, or any Indian United States deputy marshal, while lawfully engaged in the execution of any United States process, or lawfully engaged in any other duty imposed upon such policeman or marshal by the laws of the United States, any of the following crimes, namely, murder, manslaughter, or assault with intent to kill, within the Indian Territory, shall be subject to the laws of the United States relating to such crimes, and shall be tried by the district court of the United States exercising criminal jurisdiction where said offense was committed, and shall be subject to the same penalties as are all other persons charged with the commission of said crimes, respectively; and the said courts are hereby given jurisdiction in all such cases. *Act of March 2, 1887 (24 Stat. L., 464).*

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<sup>1</sup> The establishment of Indian police has been authorized by the several acts of appropriation since that of March 27, 1878 (20 Stat. L., 86). The detachments of this force authorized by the Secretary of the Interior to be maintained at the several Indian reservations are employed, under the direction of the respective Indian agents, in the preservation of order and in the execution of the laws relating to the management of Indians and the government of the Indian country.

#### ALASKA.

Alaska, though unorganized as a Territory, and included in the military department of the Columbia, is no more under military government or jurisdiction than is any other Territory or any State of the United States. (a) (Dig. J. A. Gen., 147, par. 2.)

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a "It is a mistake to suppose that the Territory of Alaska is under military rule any more than any other part of the country, except as to the introduction of spirituous liquors, and the making of arrests for violations of" the existing law regulating their introduction and disposition (see INDIAN COUNTRY, sec. 1, note), in cases of which arrests "the military really act as civil officers and in subordination to the civil law." (In re Carr, 3 Sawyer, 318.)

## CHAPTER XXXVIII.

### EMPLOYMENT OF MILITARY FORCE—IN RESISTING INVASION—IN SUPPRESSING INSURRECTION—IN SUPPORT OF THE CIVIL AUTHORITY.

Par.	Par.
1501. Power to suppress insurrection.	1536-1550. Civil rights.
1502. Insurrection against the United States.	1551, 1552. The elective franchise.
1503. Insurrection against a State.	1553. The public health.
1504. Proclamation to insurgents to disperse.	1554, 1555. The public lands; removal of trespassers.
1505. Orders of the President calling forth the militia in case of invasion, etc.	1556. Obstructing the mails.
1506. Militia, how apportioned.	1557. Contracts, etc., in restraint of trade.
1507. Subject to Articles of War.	1558-1561. The Pacific railways.
1508-1513. Removal of persons from Indian reservations.	1562. Restrictions upon the use of military force.
1514-1535. Suspension of intercourse.	1563-1573. Neutrality.
	1574-1576. Extradition.
	1577-1585. The guano islands.
	1586-1593. Treason.

#### INSURRECTION AGAINST THE UNITED STATES.

**1501.** Whenever insurrection, domestic violence, unlawful combinations, or conspiracies in any State so obstructs or hinders the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges, or immunities, or protection, named in the Constitution and secured by the laws for the protection of such rights, privileges, or immunities, and the constituted authorities of such State are unable to protect, or, from any cause, fail in or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of the equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases, or whenever any such insurrection, violence, unlawful combination, or conspiracy, opposes or obstructs the laws of the United States, or the due execution thereof, or impedes or obstructs

Power to suppress insurrection.  
Apr. 20, 1871, c. 22, s. 3, v. 17, p. 14.  
Sec. 5299, R.S.

the due course of justice under the same, it shall be lawful for the President, and it shall be his duty, to take such measures, by the employment of the militia or the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations.<sup>1</sup>

Insurrection  
against the Gov-  
ernment of the  
United States.  
July 29, 1861, c.  
25, s. 1, v. 12, p.  
281.

Sec. 5298, R.S.

**1502.** Whenever, by reason of unlawful obstructions, combinations, or assemblages of persons, or rebellion against the authority of the Government of the United States, it shall become impracticable, in the judgment of the President, to enforce, by the ordinary course of judicial proceedings, the laws of the United States within any State or Territory, it shall be lawful for the President to call forth the militia of any or all the States, and to employ such parts of the land and naval forces of the United States as he may deem necessary to enforce the faithful execution of the laws of the United States, or to suppress such rebellion, in whatever State or Territory thereof the laws of the United States may be forcibly opposed, or the execution thereof forcibly obstructed.<sup>2</sup>

#### INSURRECTION AGAINST A STATE.

Insurrection  
against a State.  
Feb. 28, 1795, c.  
36, s. 1, v. 1, p. 424;  
Mar. 3, 1807, c. 39,  
v. 2, p. 443.

Sec. 5297, R. S.

**1503.** In case of an insurrection in any State against the government thereof, it shall be lawful for the President, on application of the legislature of such State, or of the executive, when the legislature can not be convened, to call forth such number of the militia of any other State or States, which may be applied for, as he deems sufficient to suppress such insurrection; or, on like application, to employ, for the same purposes, such part of the land or naval forces of the United States as he deems necessary.<sup>3</sup>

<sup>1</sup> The power to enforce its laws and to execute its functions in all places does not derogate from the power of the State to execute its laws at the same time and in the same places. The one does not exclude the other except where both can not be executed at the same time. In that case the words of the Constitution itself show which is to yield; "this Constitution and the laws of the United States which shall be made in pursuance thereof; \* \* \* shall be the supreme law of the land."

Although no State could establish and maintain a permanent military government, yet it may use its military power to put down an armed insurrection too strong to be controlled by the civil authority. The State must determine for itself what degree of force the crisis demands. (*Luther v. Borden*, 7 How., 1; see also 16 Op. Att. Gen., 162.) See also note to paragraph 1556, post.

<sup>2</sup> The National Government has the right to use physical force in any part of the United States to compel obedience to its laws, and to carry into execution the powers conferred upon it by the Constitution. "We hold it to be an incontrovertible principle that the Government of the United States may, by means of physical force, exercised through its official agents, execute on every foot of American soil the powers and functions that belong to it." (*Ex parte Siebold*, 100 U. S., 371, 395; *U. S. v. Neagle*, 135 U. S., 1, 60; *Logan v. U. S.*, 144 U. S., 263, 294.)

As a necessary incident of the power to declare and prosecute war, the Federal Government has a right to transport troops through and over the territory of any State of the Union. (*Crandall v. Nevada*, 6 Wall., 35. See also 16 Op. Att. Gen., 162; 17 *ibid.*, 242, 333; 19 *ibid.*, 293, and note to par. 1556, post.)

<sup>3</sup> Under article 4, section 4, of the Constitution, the Army may be employed to protect a State from "invasion" or "domestic violence" only by order of the President, made "on application of the legislature, or of the executive when the legislature can not be convened." A military commander, of whatever rank or command, can have no authority, except by the order thus made of the President, to furnish troops to a

1504. Whenever, in the judgment of the President, it becomes necessary to use the military forces under this Title, the President shall forthwith, by proclamation, command the insurgents to disperse and retire peaceably to their respective abodes, within a limited time.

Proclamation to insurgents to disperse.

July 29, 1861, c. 25, s. 2, v. 12, p. 282.

Sec. 5300, R. S.

## INVASION.

1505. Whenever the United States are invaded, or are in imminent danger of invasion from any foreign nation or Indian tribe, or of rebellion against the authority of the Government of the United States, it shall be lawful for the President to call forth such number of the militia of the State or States, most convenient to the place of danger, or scene of action, as he may deem necessary to repel such invasion, or to suppress such rebellion, and to issue his orders for that purpose to such officers of the militia as he may think proper.<sup>1</sup>

Orders of President calling forth militia in case of invasion, etc.

Feb. 28, 1795, c. 36, s. 1, v. 1, p. 424.

Martin v. Mott, 12 Wh., 19; McColl's Case, 5 Phila., 259.

Sec. 1642, R. S.

1506. When the militia of more than one State is called into the actual service of the United States by the President, he shall apportion them among such States according to representative population.

Militia, how apportioned.

July 17, 1862, c. 201, s. 1, v. 12, p. 597.

Sec. 1643, R. S.

governor or other functionary of a State, to aid him in making arrests or establishing law and order. (Dig. Opin. J. A. Gen., 161, par. 1.)

The proviso of the Constitution, "when the legislature can not be convened," may be said to mean when it is not in session, or can not, by the State law, be assembled forthwith or in time to provide for the emergency. When it is in session, or can legally and at once be called together, it will not be lawful for the President to employ the army on the application merely of the governor. (Ibid., par. 2.)

A military force employed according to article 4, section 4, of the Constitution, is to remain under the direction and orders of the President as Commander in Chief and his military subordinates; it can not be placed under the direct orders or exclusive disposition of the governor of the State. (Ibid., par. 3.)

In all cases of civil disorders or domestic violence it is the duty of the Army to preserve an attitude of indifference and inaction till ordered to act by the President, by the authority of the Constitution or of section 2150, 5297, or 5298, Revised Statutes, or other public statute. An officer or soldier may, indeed, interfere to arrest a person in the act of committing a crime, or to prevent a breach of the peace in his presence, but this he does as a citizen and not in his military capacity. Any combined effort by the military, as such, to make arrests or otherwise prevent breaches of the peace or violations of law in civil cases, except by the order of the President or the requirement of a United States official authorized to require their services on a posse comitatus, must necessarily be illegal. In a case of civil disturbance in violation of the laws of a State, a military commander can not volunteer to intervene with his command without incurring a personal responsibility for his acts. In the absence of the requisite orders he may not even march or array his command for the purpose of exerting a moral effect or any effect in terrorem; such a demonstration, indeed, could only compromise the authority of the United States, while insulting the sovereignty of the State. (Ibid., 164, par. 7.)

See also General Orders No. 26, Adjutant-General's Office, of 1894 (A. R., 487), for instructions as to the use of the military force in support of the civil authority.

<sup>1</sup>The act of February 28, 1795 (1 Stat. L., 424), authorizing the President, under certain circumstances, to call out the militia, is constitutional, and the President is the final judge of the emergency justifying such a call. (Martin v. Mott, 12 Wheat., 19.) By this act the power of deciding whether the exigency had arisen upon which the Government of the United States is bound to interfere is given to the President. He is to act upon the application of the legislature, or of the executive, and consequently he must determine what body of men constitute the legislature, and who is the governor, before he can act. The fact that both parties claim the right to the government can not alter the case, for both can not be entitled to it. If there is an armed conflict, like the one of which we are speaking, it is a case of domestic violence, and one of the parties must be in insurrection against the lawful government. And the President must, of necessity, decide which is the government, and which party is unlawfully arrayed against it, before he can perform the duty imposed upon him by the act of Congress. (Luther v. Borden, 7 How., I, II.)

In the case of Houston v. Moore (5 Wheat., 1), it was decided that although a militiaman who refused to obey the orders of the President calling him into the public service was not, in the sense of the act of February 28, 1795, "employed in the service of the United States," so as to be subject to the Rules and Articles of War, yet that

Subject to Articles of War.

Feb. 28, 1795, c. 36, s. 4, v. 1, p. 424; July 29, 1861, c. 25, s. 3, v. 12, p. 282.

Sec. 1644, R. S.

1507. The militia, when called into the actual service of the United States for the suppression of rebellion against and resistance to the laws of the United States, shall be subject to the same rules and articles of war as the regular troops of the United States.

#### EMPLOYMENT OF TROOPS ON INDIAN RESERVATIONS.

Removal of persons from Indian reservations.

June 30, 1834, c. 161, s. 10, v. 4, p. 730.

Sec. 2147, R. S.

1508. The superintendent of Indian affairs, and the Indian agents and sub-agents, shall have authority to remove from the Indian country<sup>1</sup> all persons found therein contrary to law; and the President is authorized to direct the military force to be employed in such removal.

Penalty for return.

Aug. 18, 1856, c. 161, s. 2, v. 11, p. 80.

Sec. 2148, R. S.

1509. If any person who has been removed from the Indian country shall thereafter at any time return or be found within the Indian country, he shall be liable to a penalty of one thousand dollars.<sup>1</sup>

Removal from reservations.

June 12, 1858, c. 155, s. 2, v. 11, p. 332.

Sec. 2149, R. S.

1510. The Commissioner of Indian Affairs is authorized and required, with the approval of the Secretary of the Interior, to remove from any tribal reservation any person being therein without authority of law, or whose presence within the limits of the reservation may, in the judgment of the Commissioner, be detrimental to the peace and welfare of the Indians; and may employ for the purpose such force as may be necessary to enable the agent to effect the removal of such person.

Employment of the military in apprehending persons violating the law.

June 30, 1834, c. 161, ss. 21, 23, v. 4, p. 732.

Sec. 2150, R. S.

1511. The military forces of the United States may be employed in such manner and under such regulations as the President may direct—

First. In the apprehension of every person who may be in the Indian country in violation of law; and in conveying him immediately from the Indian country, by the nearest convenient and safe route, to the civil authority of the Territory or judicial district in which such person shall be found, to be proceeded against in due course of law;

Second. In the examination and seizure of stores, packages, and boats, authorized by law;

Third. In preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law;

Fourth. And also in destroying and breaking up any distillery for manufacturing ardent spirits set up or continued within the Indian country.

he was liable to be tried for the offense under the fifth section of the same act, by court-martial called under the authority of the United States. The great doubt in that case was whether the delinquent was liable to be tried for the offense by a court-martial organized under State authority. (*Martin v. Mott*, 12 Wheat., 19, 34.)

<sup>1</sup> For a definition of the term "Indian country," see the chapter entitled THE INDIANS, ETC.

**1512.** No person apprehended by military force under the preceding section shall be detained longer than five days after arrest and before removal. All officers and soldiers who may have any such person in custody shall treat him with all the humanity which the circumstances will permit.

Detention of persons apprehended by the military.  
Sec. 23, *ibid.*  
Sec. 2151, R. S.

**1513.** The superintendents, agents, and sub-agents shall endeavor to procure the arrest and trial of all Indians accused of committing any crime, offense, or misdemeanor, and of all other persons who may have committed crimes or offenses within any State or Territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize. The President may direct the military force of the United States to be employed in the apprehension of such Indians, and also in preventing or terminating hostilities between any of the Indian tribes.<sup>1</sup>

Arrest of absconding Indians guilty of crime.  
June 30, 1834, c. 161, s. 19, v. 4, p. 732.  
Sec. 2152, R. S.

#### SUSPENSION OF INTERCOURSE.

**1514.** Whenever the President, in pursuance of the provisions of this Title, has called forth the militia to suppress combinations against the laws of the United States, and to cause the laws to be duly executed, and the insurgents shall have failed to disperse by the time directed by the President, and when the insurgents claim to act under the authority of any State or States, and such claim is not disclaimed or repudiated by the persons exercising the functions of government in such State or States, or in the part or parts thereof in which such combination exists, and such insurrection is not suppressed by such State or States, or whenever the inhabitants of any State or part thereof are at any time found by the President to be in insurrection against the United States, the President may, by proclamation, declare that the inhabitants of such State, or of any section or part thereof where such insurrection exists, are in a state of insurrection against the United States; and thereupon all commercial intercourse by and between the same and the citizens thereof and the citizens of the rest of the United States shall cease and be unlawful so long as such condition of hostility shall continue; and all goods and chattels, wares and merchandise, coming from such State or section into the other parts of the United States, or proceeding from other parts of the United States to such State or section, by land or water, shall, together with the vessel or vehicle conveying the same, or conveying

Suspension of commercial intercourse.  
July 13, 1861, c. 3, s. 5, v. 12, p. 257;  
July 31, 1861, c. 32, v. 12, p. 284.  
Sec. 5301, R. S.

<sup>1</sup> See, also, for authority to use military force in connection with Indian reservations and for the protection of Indians, sections 2118, 2147, 2150, 2151, and 2152, Revised Statutes, and the chapter entitled THE INDIANS, ETC.



persons to or from such State or section, be forfeited to the United States.<sup>1</sup>

In loyal States.  
July 2, 1864, c.  
225, s. 5, v. 13, p.  
376. **1515.** Whenever any part of a State not declared to be in insurrection is under the control of insurgents, or is in

**Sec. 5302, R. S.** dangerous proximity to places under their control, all commercial intercourse therein and therewith shall be subject to the prohibitions and conditions of the preceding section for such time and to such extent as shall become necessary to protect the public interests, and be directed by the Secretary of the Treasury, with the approval of the President.

To whom pro-  
hibition shall ex-  
tend. **1516.** The provisions of this Title in relation to commercial intercourse shall apply to all commercial intercourse

Sec. 4, *ibid.*  
**Sec. 5303, R. S.** by and between persons residing or being within districts within the lines of national military occupation in the States or parts of States declared in insurrection, whether with each other or with persons residing or being within districts declared in insurrection and not within those lines; and all persons within the United States, not native or naturalized citizens thereof, shall be subject to the same prohibitions, in all commercial intercourse with inhabitants of States or parts of States declared in insurrection, as citizens of States not declared to be in insurrection.

Commercial in-  
tercourse, to  
what extent per-  
mitted. **1517.** The President may, in his discretion, license and permit commercial intercourse with any part of such State

July 13, 1861, c.  
3, s. 5, v. 12, p. 257;  
July 2, 1864, c. 225,  
s. 9, v. 13, p. 377. or section, the inhabitants of which are so declared in a state of insurrection, so far as may be necessary to author-

**Sec. 5304, R. S.** ize supplying the necessities of loyal persons residing in insurrectionary States, within the lines of actual occupation by the military forces of the United States, as indicated by published order of the commanding general of the department or district so occupied; and, also, so far as may be necessary to authorize persons residing within such lines to bring or send to market in the loyal States any products which they shall have produced with their own labor or the labor of freedmen, or others employed and paid by them, pursuant to rules relating thereto, which may be established under proper authority. And no goods, wares, or merchandise shall be taken into a State declared in insurrection, or transported therein, except to and from such places and to such monthly amounts as shall have been previously agreed upon, in writing, by the commanding general of the department in which such places are situated, and an officer designated by the Secretary of the Treasury for that purpose. Such commercial intercourse

<sup>1</sup> The Reform, 2 Wall., 258; *ibid.*, 3 Wall., 617; U. S. v. Weed, 5 Wall., 62; The Hampton, 5 Wall., 372; The Ouachita Cotton, 6 Wall., 521; The Venice, 2 Wall., 258; Cutner v. U. S., 17 Wall., 517.

shall be in such articles and for such time and by such persons as the President, in his discretion, may think most conducive to the public interest; and, so far as by him licensed, shall be conducted and carried on only in pursuance of rules and regulations prescribed by the Secretary of the Treasury.<sup>1</sup>

1518. The Secretary of the Treasury may appoint such officers at places where officers of the customs are not now authorized by law as may be needed to carry into effect such licenses, rules, and regulations. In all cases where officers of the customs, or other salaried officers, are appointed by him to carry into effect such licenses, rules, and regulations, such officer shall be entitled to receive one thousand dollars a year for his services, in addition to his salary or compensation under any other law. But the aggregate compensation of any such officer shall not exceed the sum of five thousand dollars in any one year.

Appointment and compensation of officers.  
July 13, 1861, c. 3, s. 5, v. 12, p. 267;  
June 30, 1864, c. 171, s. 28, v. 13, p. 218.  
Sec. 5305, R. S.

1519. Every officer of the United States, civil, military, or naval, and every sutler, soldier, marine, or other person, who takes, or causes to be taken into a State declared to be in insurrection, or to any other point to be thence taken into such State, or who transports or sells, or otherwise disposes of therein, any goods, wares, or merchandise whatsoever, except in pursuance of license and authority of the President, as provided in this Title, or who makes any false statement or representation upon which license and authority is granted for such transportation, sale, or other disposition, or who, under any license or authority obtained, willfully and knowingly transports, sells, or otherwise disposes of any other goods, wares, or merchandise than such as are in good faith so licensed and authorized, or who willfully and knowingly transports, sells, or disposes of the same, or any portion thereof, in violation of the terms of such license or authority, or of any rule or regulation prescribed by the Secretary of the Treasury concerning the same, or who is guilty of any act of embezzlement, of willful misappropriation of public or private money or property, of keeping false accounts, or of willfully making any false returns, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Trading without license, etc.  
July 2, 1864, c. 225, s. 10, v. 13, p. 377.  
Sec. 5306, R. S.

<sup>1</sup>The Sea Lion, 5 Wall., 630; The Ouachita Cotton, 6 Wall., 521; Coppell v. Hall, 7 Wall., 542; McKee v. U. S., 8 Wall., 163; U. S. v. Lane, 8 Wall., 185.

Investigations  
to detect frauds.

*Ibid.*

Sec. 5307, R. S.

**1520.** It shall be the duty of the Secretary of the Treasury, from time to time, to institute such investigations as may be necessary to detect and prevent frauds and abuses in any trade or transactions which may be licensed between inhabitants of loyal States and of States in insurrection. And the agents making such investigations shall have power to compel the attendance of witnesses, and to make examinations on oath.

Confiscation of  
property employed in aid of  
insurrection.

Aug. 6, 1861, c.  
60, s. 1, v. 12, p.  
319.

Sec. 5308, R. S.

**1521.** Whenever during any insurrection against the Government of the United States, after the President shall have declared by proclamation that the laws of the United States are opposed, and the execution thereof obstructed, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by the power vested in the marshals by law, any person, or his agent, attorney, or employé, purchases or acquires, sells or gives, any property of whatsoever kind or description, with intent to use or employ the same, or suffers the same to be used or employed in aiding, abetting, or promoting such insurrection or resistance to the laws, or any person engaged therein; or being the owner of any such property, knowingly uses or employs, or consents to such use or employment of the same, all such property shall be lawful subject of prize and capture wherever found; and it shall be the duty of the President to cause the same to be seized, confiscated, and condemned.<sup>1</sup>

Proceedings,  
where had.

Aug. 6, 1861, c.  
60, s. 2, v. 12, p.  
319; Feb. 27, 1877,  
c. 69, v. 19, p. 253.

Sec. 5309, R. S.

**1522.** Such prizes and capture shall be condemned in the district or circuit court of the United States having jurisdiction of the amount, or in admiralty in any district in which the same [may] be seized, or into which they may be taken and proceedings first instituted.

Property taken  
on inland waters.

July 2, 1864, c.  
225, s. 7, v. 13, p.  
377.

Sec. 5310, R. S.

**1523.** No property seized or taken upon any of the inland waters of the United States by the naval forces thereof shall be regarded as maritime prize; but all property so seized or taken shall be promptly delivered to the proper officers of the courts.

How proceed-  
ings shall be in-  
stituted.

Aug. 6, 1861, c.  
68, s. 3, v. 12, p. 319.

Sec. 5311, R. S.

**1524.** The Attorney-General, or the attorney of the United States for any judicial district in which such property may at the time be, may institute the proceedings of condemnation, and in such case they shall be wholly for the benefit of the United States; or any person may file an information with such attorney, in which case the proceedings shall be for the use of such informer and the United States in equal parts.<sup>2</sup>

<sup>1</sup> *Mrs. Alexander's Cotton*, 2 Wall., 404; *Union Ins. Co. v. U. S.*, 6 Wall., 759; *Armstrong's Foundry*, 6 Wall., 766; *Morris's Cotton*, 8 Wall., 507; *U. S. v. Shares of Capital Stock*, 5 Blatch., 231.

<sup>2</sup> *Francis v. U. S.*, 5 Wall., 338; *Confiscation Cases*, 7 Wall., 454; *Miller v. U. S.*, 11 Wall., 268; *Tyler v. Defrees*, 11 Wall., 331.

**1525.** The Secretary of the Treasury is authorized to prohibit and prevent the transportation in any vessel, or upon any railroad, turnpike, or other road or means of transportation within the United States, of any property, whatever may be the ostensible destination of the same, in all cases where there are satisfactory reasons to believe that such property is intended for any place in the possession or under the control of insurgents against the United States, or that there is imminent danger that such property will fall into the possession or under the control of such insurgents; and he is further authorized, in all cases where he deems it expedient so to do, to require reasonable security to be given that property shall not be transported to any place under insurrectionary control, and shall not, in any way, be used to give aid or comfort to such insurgents; and he may establish all such general or special regulations as may be necessary or proper to carry into effect the purposes of this section; and if any property is transported in violation of this act, or of any regulation of the Secretary of the Treasury, established in pursuance thereof, or if any attempt shall be made so to transport any, it shall be forfeited.<sup>1</sup>

Prohibition upon transportation of goods to aid insurrection. May 20, 1862, c. 81, s. 3, v. 12, p. 404. Sec. 5312, R. S.

**1526.** All persons in the military or naval service of the United States are prohibited from buying or selling, trading, or in any way dealing in captured or abandoned property, whereby they shall receive or expect any profit, benefit, or advantage to themselves, or any other person, directly or indirectly connected with them; and it shall be the duty of such person whenever such property comes into his possession or custody, or within his control, to give notice thereof to some agent, appointed by virtue of this Title, and to turn the same over to such agent without delay. Any officer of the United States, civil, military, or naval, or any sutler, soldier, or marine, or other person who shall violate any provision of this section, shall be deemed guilty of a misdemeanor, and shall be fined not more than five thousand dollars, and imprisoned in the penitentiary not more than three years. Violations of this section shall be cognizable before any court, civil or military, competent to try the same.

Prohibition upon trade in captured or abandoned property. July 2, 1864, c. 325, s. 10, v. 13, p. 277. Sec. 5313, R. S.

**1527.** Whenever the President shall deem it impracticable, by reason of unlawful combinations of persons in opposition to the laws of the United States, to collect the duties on imports in the ordinary way, at any port of entry in any collection-district, he may cause such duties to be

Change of port of entry in case of insurrection. July 13, 1861, c. 3, s. 1, v. 12, p. 255. Sec. 5314, R. S.

<sup>1</sup> Gay's Gold, 13 Wall., 358.

collected at any port of delivery in the district until such obstruction ceases; in such case the surveyor at such port of delivery shall have the powers and be subject to all the obligations of a collector at a port of entry. The Secretary of the Treasury, with the approval of the President, shall also appoint such weighers, gaugers, measurers, inspectors, appraisers, and clerks as he may deem necessary, for the faithful execution of the revenue laws at such port of delivery, and shall establish the limits within which such port of delivery is constituted a port of entry. And all the provisions of law regulating the issue of marine papers, the coasting-trade, the warehousing of imports, and the collection of duties, shall apply to the ports of entry thus constituted, in the same manner as they do to ports of entry established by law.

Removal of cus-  
tom-house.

Sec. 2, *ibid.*, p.  
256.

Mar. 3, 1875, c.  
136, s. 2, v. 18, p.

469.

Sec. 5315, R. S.

1528. Whenever, at any port of entry, the duties on im-ports cannot, in the judgment of the President, be collected in the ordinary way, or by the course provided in the preceding section, by reason of the cause mentioned therein, he may direct that the custom-house for the district be established in any secure place within the district, either on land or on board any vessel in the district, or at sea near the coast; and in such case the collector shall reside at such place, or on shipboard, as the case may be, and there detain all vessels and cargoes arriving within or approaching the district, until the duties imposed by law on such vessels and their cargoes are paid in cash. But if the owner or consignee of the cargo on board any vessel thus detained, or the master of the vessel, desires to enter a port of entry in any other district where no such obstructions to the execution of the laws exist, the master may be permitted so to change the destination of the vessel and cargo in his manifest; whereupon the collector shall deliver him a written permit to proceed to the port so designated. And the Secretary of the Treasury, with the approval of the President, shall make proper regulations for the enforcement on shipboard of such provisions of the laws regulating the assessment and collection of duties as in his judgment may be necessary and practicable.

Enforcement of  
preceding sec-  
tions.

July 12, 1861, c.

3, s. 3, v. 12, p. 256.

Sec. 5316, R. S.

1529. It shall be unlawful to take any vessel or cargo detained under the preceding section from the custody of the proper officers of the customs, unless by process of some court of the United States; and in case of any attempt otherwise to take such vessel or cargo by any force, or combination, or assemblage of persons, too great to be overcome by the officers of the customs, the President, or such person

as he shall have empowered for that purpose, may employ such part of the Army or Navy or militia of the United States, or such force of citizen volunteers as may be necessary, to prevent the removal of such vessel or cargo, and to protect the officers of the customs in retaining the custody thereof.

**1530.** Whenever, in any collection-district, the duties on imports cannot, in the judgment of the President, be collected in the ordinary way, nor in the manner provided by the three preceding sections, by reason of the cause mentioned in section fifty-three hundred and fourteen [Rev. Stat.],<sup>1</sup> the President may close the port of entry in that district; and shall in such case give notice thereof by proclamation. And thereupon all right of importation, warehousing, and other privileges incident to ports of entry shall cease and be discontinued at such port so closed until it is opened by the order of the President on the cessation of such obstructions. Every vessel from beyond the United States, or having on board any merchandise liable to duty, which attempts to enter any port which has been closed under this section, shall, with her tackle, apparel, furniture, and cargo, be forfeited.

Entire district closed to entry.  
Sec. 4, *ibid.*  
Sec. 5317, R. S.

**1531.** In the execution of laws providing for the collection of duties on imports and tonnage, the President, in addition to the revenue-cutters in service, may employ in aid thereof such other suitable vessels as may, in his judgment, be required.

Vessels in addition to revenue cutters may be employed.  
Sec. 7, *ibid.*  
Sec. 5318, R. S.

**1532.** From and after fifteen days after the issuing of the proclamation, as provided in section fifty-three hundred and one [Rev. Stat.],<sup>2</sup> any vessel belonging in whole or in part to any citizen or inhabitant of such State or part of a State whose inhabitants are so declared in a state of insurrection, found at sea, or in any port of the rest of the United States, shall be forfeited.<sup>3</sup>

Forfeiture of vessels belonging to citizens of insurrectionary States.  
*Ibid.*  
Sec. 5319, R. S.

**1533.** The Secretary of the Treasury is authorized to refuse a clearance to any vessel or other vehicle laden with merchandise, destined for a foreign or domestic port, whenever he shall have satisfactory reason to believe that such merchandise, or any part thereof, whatever may be its ostensible destination, is intended for ports in possession or under control of insurgents against the United States; and if any vessel for which a clearance or permit has been refused by the Secretary of the Treasury, or by his order, shall depart or attempt to depart for a foreign or domestic

Refusal of clearance to vessels laden with suspected merchandise.  
May 20, 1862, c. 51, s. 1, v. 12, p. 404.  
Sec. 5320, R. S.

<sup>1</sup> Paragraph 1527, *ante*.

<sup>2</sup> Paragraph 1514, *ante*.

<sup>3</sup> The Schooner Keeling, Blatch. Pr. Cas., 92.

port without being duly cleared or permitted, such vessel, with her tackle, apparel, furniture, and cargo, shall be forfeited.

Bond upon  
clearance.

Sec. 2, *ibid.*

Sec. 5321, R.S.

**1534.** Whenever a permit or clearance is granted for either a foreign or domestic port, it shall be lawful for the collector of the customs granting the same, if he deems it necessary, under the circumstances of the case, to require a bond to be executed by the master or the owner of the vessel, in a penalty equal to the value of the cargo, and with sureties to the satisfaction of such collector, that the cargo shall be delivered at the destination for which it is cleared or permitted, and that no part thereof shall be used in affording aid or comfort to any person or parties in insurrection against the authority of the United States.

Liens upon con-  
demned vessels.

Mar. 3, 1863, c.  
90, v. 12, p. 762.

Sec. 5322, R.S.

**1535.** In all cases wherein any vessel, or other property, is condemned in any proceeding by virtue of any laws relating to insurrection or rebellion, the court rendering judgment of condemnation shall, notwithstanding such condemnation, and before awarding such vessel, or other property, or the proceeds thereof, to the United States, or to any informer, first provide for the payment, out of the proceeds of such vessel, or other property, of any bona-fide claims which shall be filed by any loyal citizen of the United States, or of any foreign state or power at peace and amity with the United States, intervening in such proceeding, and which shall be duly established by evidence as a valid claim against such vessel, or other property, under the laws of the United States or any State thereof not declared to be in insurrection. No such claim shall be allowed in any case where the claimant has knowingly participated in the illegal use of such ship, vessel, or other property. This section shall extend to such claims only as might have been enforced specifically against such vessel, or other property, in any State not declared to be in insurrection, wherein such claim arose.<sup>1</sup>

#### CIVIL RIGHTS.

Equal rights  
under the law.

May 31, 1870, c.

114, s. 16, v. 16, p.

144; Mar. 1, 1875,

c. 114, s. 1, v. 18,

p. 336.

Sec. 1977, R. S.

**1536.** All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

<sup>1</sup>The Hampton, 5 Wall., 372.

**1537.** All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Rights of citizens in respect to real and personal property.

Apr. 9, 1866, c. 31, s. 1, v. 14, p. 27.  
Sec. 1978, R. S.

**1538.** Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Civil action for deprivation of rights.

Apr. 20, 1871, c. 22, s. 1, v. 17, p. 13.  
Sec. 1979, R. S.

**1539.** First. If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

Conspiracy.

July 31, 1861, c. 33, v. 12, p. 284;  
Apr. 20, 1871, c. 22, s. 2, v. 17, p. 13;  
Mar. 1, 1875, c. 114, s. 2, v. 18, p. 336.

Sec. 1980, R. S.

Second. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

Third. If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal



protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice-President, or as a member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.

Action for neglect to prevent conspiracy.

Apr. 20, 1871, c.

22, s. 6, v. 17, p. 15.

Sec. 1981, R. S.

**1540.** Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in the preceding section, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

District attorney, etc., to prosecute.

Apr. 9, 1866, c.

31, s. 4, v. 14, p.

28; May 31, 1870,

c. 114, s. 9, v. 16,

p. 142.

Sec. 1982, R. S.

**1541.** The district attorneys, marshals, and deputy marshals, the commissioners appointed by the circuit and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at

the expense of the United States, to institute prosecutions against all persons violating any of the provisions of chapter seven of the Title "CRIMES," and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense.

**1542.** The circuit courts of the United States and the district courts of the Territories, from time to time, shall increase the number of commissioners; so as to afford a speedy and convenient means for the arrest and examination of persons charged with the crimes referred to in the preceding section; and such commissioners are authorized and required to exercise all the powers and duties conferred on them herein with regard to such offenses in like manner as they are authorized by law to exercise with regard to other offenses against the laws of the United States.

**1543.** The commissioners authorized to be appointed by the preceding section are empowered, within their respective counties, to appoint, in writing, under their hands, one or more suitable persons, from time to time, who shall execute all such warrants or other process as the commissioners may issue in the lawful performance of their duties, and the persons so appointed shall have authority to summon and call to their aid the bystanders or posse comitatus of the proper county, or such portion of the land or naval forces of the United States, or of the militia, as may be necessary to the performance of the duty with which they are charged; and such warrants shall run and be executed anywhere in the State or Territory within which they are issued.

**1544.** Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to do him, issued under the provisions hereof.

**1545.** The district attorneys, marshals, their deputies, and the clerks of the courts of the United States and territorial courts shall be paid for their services, in cases under the foregoing provisions, the same fees as are allowed to them for like services in other cases; and where the proceedings are before a commissioner he shall be entitled to a fee of ten dollars for his services in each case, inclusive of all services incident to the arrest and examination.

**1546.** Every person appointed to execute process under section nineteen hundred and eighty-four [Rev. Stat.]<sup>1</sup> shall be entitled to a fee of five dollars for each party he may arrest and take before any commissioner, with such other

Commissioners.

Apr. 9, 1866, c. 13, s. 4, v. 14, p. 28; May 31, 1870, c. 114, s. 9, v. 16, p. 142.

Sec. 1983, R.S.

They may appoint persons to execute warrants, etc.

Apr. 9, 1866, c. 31, s. 5, v. 14, p. 28; May 31, 1870, c. 114, s. 10, v. 16, p. 142.

Sec. 1984, R.S.

Marshal to obey precepts, etc.

Apr. 9, 1866, c. 31, s. 5, v. 14, p. 28; May 31, 1870, c. 114, s. 10, v. 16, p. 142.

Sec. 1985, R.S.

Fees of district attorney, etc.

Apr. 9, 1866, c. 31, s. 7, v. 14, p. 29; May 31, 1870, c. 114, s. 12, v. 16, p. 143.

Sec. 1986, R.S.

Of persons appointed to execute process, etc.

Apr. 9, 1866, c. 31, s. 7, v. 14, p. 29; May 31, 1870, c. 114, s. 12, v. 16, p. 143.

Sec. 1987, R.S.

<sup>1</sup> Paragraph 1543, ante.

fees as may be deemed reasonable by the commissioner for any additional services necessarily performed by him, such as attending at the examination, keeping the prisoner in custody, and providing him with food and lodging during his detention, and until the final determination of the commissioner; such fees to be made up in conformity with the fees usually charged by the officers of the courts of justice within the proper district or county, as near as may be practicable, and paid out of the Treasury of the United States on the certificate of the judge of the district within which the arrest is made, and to be recoverable from the defendant as part of the judgment in case of conviction.

Speedy trial.  
Apr. 9, 1866, c.  
31, s. 8, v. 14, p. 29.  
Sec. 1988, R. S.

**1547.** Whenever the President has reason to believe that offenses have been, or are likely to be committed against the provisions of chapter seven of the Title CRIMES, within any judicial district, it shall be lawful for him, in his discretion, to direct the judge, marshal, and district attorney of such district to attend at such place within the district, and for such time as he may designate, for the purpose of the more speedy arrest and trial of persons so charged, and it shall be the duty of every judge or other officer, when any such requisition is received by him to attend at the place and for the time therein designated.

Aid of the military and naval forces.

Apr. 8, 1866, c.  
31, s. 9, v. 14, p. 29;  
May 31, 1870, c.  
114, s. 13, v. 16, p.  
143.

Sec. 1989, R. S.

**1548.** It shall be lawful for the President of the United States, or such person as he may empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia, as may be necessary to aid in the execution of judicial process issued under any of the preceding provisions, or as shall be necessary to prevent the violation and enforce the due execution of the provisions of this Title.

Peonage abolished.

Mar. 2, 1867, c.  
187, s. 1, v. 14, p.  
546.

Sec. 1990, R. S.

**1549.** The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in the Territory of New Mexico, or in any other Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of the Territory of New Mexico, or of any other Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

Foregoing section, how enforced.

Mar. 2, 1867, c.  
187, s. 2, v. 14, p. 546.  
Sec. 1991, R. S.

**1550.** Every person in the military or civil service in the Territory of New Mexico shall aid in the enforcement of the preceding section.

## THE ELECTIVE FRANCHISE.

1551. No officer of the Army or Navy of the United States shall prescribe or fix, or attempt to prescribe or fix, by proclamation, order, or otherwise, the qualifications of voters in any State, or in any manner interfere with the freedom of any election in any State, or with the exercise of the free right of suffrage in any State.

Interference with freedom of elections by officers of Army or Navy.  
Feb. 25, 1865, c. 52, s. 1, v. 13, p. 437.  
Sec. 2003, R. S.

1552. All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.<sup>1</sup>

Race, color, or previous condition not to affect the right to vote.  
May 31, 1870, c. 114, s. 1, v. 16 p. 140.  
Sec. 2004, R. S.

## THE PUBLIC HEALTH.

1553. The quarantines and other restraints established by the health-laws of any State, respecting any vessels arriving in, or bound to, any port or district thereof, shall be duly observed by the officers of the customs revenue of the United States, by the masters and crews of the several revenue-cutters, and by the military officers commanding in any fort or station upon the sea-coast; and all such officers of the United States shall faithfully aid in the execution of such quarantines and health-laws, according to their respective powers and within their respective precincts, and as they shall be directed, from time to time, by the Secretary of the Treasury. But nothing in this Title shall enable any State to collect a duty of tonnage or impost without the consent of Congress.<sup>2</sup>

Quarantine.  
State health laws to be observed by United States officers, etc.  
Feb. 23, 1799, c. 12, s. 1, v. 1, p. 619.  
Sec. 4792, R. S.

## THE PUBLIC LANDS.

1554. The President is authorized to employ so much of the land and naval forces of the United States as may be necessary effectually to prevent the felling, cutting down, or other destruction of the timber of the United States in Florida, and to prevent the transportation or carrying

The public lands, felling timber, unlawful inclosures.  
Sec. 2460, R. S.  
Sec. 5, Feb. 25, 1885, v. 23, p. 322.

<sup>1</sup>Sections 2002 and 2005-2031, inclusive, of the Revised Statutes, were repealed by the act of February 8, 1894 (28 Stat. L., 36). 2 Abb. U. S., 120; McKay v. Campbell, 1 Saw., 374; U. S. v. Reese et al., 92 U. S., 214; U. S. v. Cruikshank et al., 92 U. S., 542.

<sup>2</sup>Gibbons v. Ogden, 9 Wh., 1; Passenger Cases, 7 How., 406.

away any such timber as may be already felled or cut down; and to take such other and further measures as may be deemed advisable for the preservation of the timber of the United States in Florida. (*Sec. 2460, Rev. Stat.*) That the President is hereby authorized to take such measures as shall be necessary to remove and destroy any unlawful inclosures of any of said lands, and to employ civil or military force as may be necessary for that purpose.<sup>1</sup> *Sec. 5, act of February 25, 1885 (23 Stat. L., 322).*

Removal of  
trespassers.  
Sec. 1, Mar. 3,  
1807, v. 2, p. 445.

1555. That if any person or persons shall, after the passing of this act, take possession of, or make a settlement on any lands ceded or secured to the United States, by any treaty made with a foreign nation, or by a cession from any State to the United States, which lands shall not have been previously sold, ceded, or leased by the United States, or the claim to which lands, by such person or persons, shall not have been previously recognized and confirmed by the United States; or if any person or persons shall cause such lands to be thus occupied, taken possession of, or settled; or shall survey, or attempt to survey, or cause to be surveyed, any such lands; or designate any boundaries thereon, by marking trees, or otherwise, until thereto duly authorized by law; such offender or offenders, shall forfeit all his or their right, title, and claim, if any he hath, or they have, of whatsoever nature or kind the same shall or may be, to the lands aforesaid, which he or they shall have taken possession of, or settled, or cause to be occupied, taken possession of, or settled, or which he or they shall have surveyed, or attempt to survey, or cause to be surveyed, or the boundaries thereof he or they shall have designated, or cause to be designated, by marking trees or otherwise. And it shall moreover be lawful for the President of the United States, to direct the marshal, or officer acting as marshal, in the manner hereinafter directed, and also to take such other measures, and to employ *such military force as he* may judge necessary and proper, to remove from lands ceded, or secured to the United States, by treaty, or cession as aforesaid, any person or persons who shall hereafter take possession of the same, or make, or attempt to make a settlement thereon, until thereunto authorized by law. \* \* \* *Sec. 1, act of March 3, 1807 (2 Stat. L., 445).*

<sup>1</sup> This statute appears as section 5 of the act of February 25, 1885 (23 Stat. L., 322), entitled "An act to prevent unlawful occupancy of the public lands."

## OBSTRUCTING THE MAILS.

**1556.** Any person who shall knowingly and willfully obstruct or retard the passage of the mail, or any carriage, horse, driver, or carrier carrying the same, shall, for every such offense, be punishable by a fine of not more than one hundred dollars.<sup>1</sup>

Obstructing the mail; penalty.

June 8, 1872, c. 335, s. 241, v. 17, p. 312.

Sec. 3995, R.S.

## CONTRACTS AND COMBINATIONS IN RESTRAINT OF TRADE.

**1557.** Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Trusts, etc., in the States, in restraint of trade, etc., illegal.

Persons combining, guilty of misdemeanor.

July 2, 1890, v. 26, p. 209.

Penalty.

**SEC. 2.** Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Persons attempting to monopolize, etc., guilty of misdemeanor.

Penalty.

**SEC. 3.** Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding

Trusts, etc., in Territories or District of Columbia illegal.

Persons engaged therein guilty of misdemeanor.

Penalty.

<sup>1</sup>The entire strength of the nation may be used to enforce, in any part of the land, the full and free exercise of all national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the National Government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arise, the Army of the nation and all its militia are at the service of the nation to compel obedience to its laws. (In re Debs, 158 U. S., 564, 582; In re Neagle, 135 U. S., 1; Ex parte Siebold, 100 U. S., 371, 395; U. S. v. Kirby, 7 Wall., 482.)

one year, or by both said punishments, in the discretion of the court.

Jurisdiction of  
United States  
circuit courts.  
Prosecuting  
officers.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Procedure.

Hearing, etc.

Temporary re-  
straining order,  
etc.

Process.

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Trust, etc.,  
property in tran-  
sit.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Forfeiture,  
seizure, and con-  
demnation.

Damages.

Litigation.

Recovery.

SEC. 7. Any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover three fold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws

of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country. *Act of July 2, 1890 (26 Stat. L., 209).*

#### NORTHERN PACIFIC RAILROAD.

1558. That said Northern Pacific Railroad, or any part thereof, shall be a post route and a military road, subject to the use of the United States, for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. *Sec. 11, act of July 2, 1864 (13 Stat L., 370).*

Northern Pacific Railroad.  
July 2, 1864, s.  
11, v. 13, p. 370.

#### THE UNION AND CENTRAL PACIFIC RAILROADS.

1559. That the grants aforesaid are made upon condition that said company shall pay said bonds at maturity, and shall keep said railroad and telegraph line in repair and use, and shall at all times transmit dispatches over said telegraph line, and transport mails, troops, and munitions of war, supplies, and public stores upon said railroad for the government, whenever required to do so by any department thereof, and that the government shall at all times have the preference in the use of the same for all the purposes aforesaid. *Sec. 6, act of July 11, 1862 (12 Stat. L., 493).*

The Union and Central Pacific Railroads.  
Sec. 6, July 1,  
1862, v. 12, p. 493.

#### THE ATLANTIC AND PACIFIC RAILROAD.

1560. That said Atlantic and Pacific Railroad, or any part thereof, shall be a post route and military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose restricting the charges for such government transportation. *Sec. 11, act of July 27, 1866 (14 Stat. L., 297).*

The Atlantic and Pacific Railroad.  
Secs. 11, July 27,  
1866, v. 14, p. 297.

1561. That the Southern Pacific Railroad, a company incorporated under the laws of the State of California, is hereby authorized to connect with the said Atlantic and Pacific Railroad, formed under this act, at such point near the boundary line of the State of California, as they shall deem most suitable for a railroad line to San Francisco, and shall have a uniform gauge and rate of freight or fare with said road; and in consideration thereof, to aid in its construction, shall have similar grants of land, subject to all the conditions and limitations herein provided, and shall be required to construct its road on the like regulations, as to time and manner, with the Atlantic and Pacific Railroad herein provided for. *Sec. 18, act of July 27, 1866 (14 Stat. L., 299).*

The Southern Pacific Railroad.  
Sec. 18, July 27,  
1866, v. 14, p. 299.



## RESTRICTION UPON THE USE OF MILITARY FORCE.

Army not to be used as a posse comitatus.

Sec. 15, June 18, 1878, v. 20, p. 152.

1562. From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress; and no money appropriated by this act shall be used to pay any of the expenses incurred in the employment of any troops in violation of this section.<sup>1</sup> *Sec. 15, act of June 18, 1878 (20 Stat. L., 152).*

<sup>1</sup>It is provided in section 15 of the act of June 18, 1878, chapter 263, that "From and after the passage of this act it shall not be lawful to employ any part of the Army of the United States, as a posse comitatus, or otherwise, for the purpose of executing the laws, except in such cases and under such circumstances as such employment of said force may be expressly authorized by the Constitution or by act of Congress." In view of this legislation, held as follows:

That inasmuch as it was not expressly authorized by any act of Congress that United States marshals should be empowered to summon the military to serve on a posse comitatus (but this was authorized only indirectly and impliedly by the provision of the act of September 24, 1789, incorporated in section 787 of the Revised Statutes), (a) the Army could not, under the existing law, legally act on the posse comitatus of a marshal or deputy marshal of the United States. (b) (Dig. Opin. J. A. Gen., 162, par. 6.)

That in the absence of such an "unlawful combination" as is contemplated by section 5298, Revised Statutes, the President would not be authorized to employ a military force to assist inspectors of customs in seizing smuggled property or arresting persons concerned in violations of the revenue laws, such an employment not being expressly authorized by any statute.

That whenever a marshal or deputy marshal was prevented from making due service of judicial process, for the arrest of persons or otherwise, by the forcible resistance or opposition of an unlawful combination or assemblage of persons, the President was expressly authorized by section 5298, Revised Statutes, to employ such part of the Army as he might deem necessary to secure the due service of such process and execute the laws; first, however, in any such case (as in any case arising under sections 5297 and 5299), making proclamation as required by section 5300.

That, notwithstanding the legislation of June 18, 1878, the President was authorized to employ the military to arrest and prevent persons engaging in introducing liquor into the Indian country contrary to law, as also to arrest persons being otherwise in the Indian country in violation of law, (c) or to make the arrest therein of Indians charged with the commission of crime, such employment being expressly authorized by sections 2150 and 2152, Revised Statutes.

That the President was authorized by section 2150, Revised Statutes, to remove by military force, after a reasonable notice to quit, certain persons commorant upon an Indian reservation contrary to the terms of a treaty between the United States and the tribe occupying the reservation, and who therefore were there "in violation of law" in the sense of that section. (d)

That the provision of June 18, 1878, was not to be construed as interfering with the authority and duty of the President to employ a necessary military force for the removal of trespassers from a military reservation, such employment not being, properly speaking, "for the purpose of executing the laws," but a mere protecting, by the executive department, of public property in its military charge. (e) (Dig. Opin. J. A. Gen., 162, par. 6.)

In the absence of any express provision contained in the acts authorizing the President to make reservations of forest lands (acts of September 25 and October 1,

<sup>a</sup> 6 Opin. Att. Gen., 471; letter of Attorney-General Evarts to the United States marshal for the northern district of Florida, Attorney-General's Office, August 20, 1868; general instructions to United States marshals from Attorney-General Taft, published in General Orders 96, Headquarters of Army, 1876; also opinion cited in next note.

<sup>b</sup> See, to a similar effect, opinion of the Attorney-General of October 10, 1878 (16 Opin., 162); also 19 Opin., 293.

<sup>c</sup> But note that, in view of the provisions of section 2151, Revised Statutes, an officer of the Army who detains a person arrested under section 2150 longer than five days before "conveying him to the civil authority," or subjects him when in arrest to unreasonably harsh treatment, renders himself liable to an action in damages for false imprisonment. (In re Carr, 3 Sawyer, 316; *Waters v. Campbell*, 5 *ibid.*, 17.)

<sup>d</sup> See 14 Opin. Att. Gen., 451; 20 *ibid.*, 245; and note the proclamation of the President published in General Orders 16, Headquarters of Army, 1880, relating to the intrusion of unauthorized persons upon the "Indian Territory" and declaring that the Army would be employed to effectuate their removal if necessary.

<sup>e</sup> "Due caution should be observed, however, that in executing this duty there be no unnecessary or wanton harm done to persons or property." (Opin. Att. Gen., 476.)

NEUTRALITY.<sup>1</sup>

Par.	Par.
1563. Accepting a foreign commission.	1568. Military expeditions against people at peace with the United States.
1564. Enlisting in foreign service.	1569. Enforcement of foregoing provisions.
1565. Arming vessels against people at peace with the United States.	1570. Compelling foreign vessels to depart.
1566. Arming vessels to cruise against citizens of the United States.	1571. Armed vessels to give bond on clearance.
1567. Augmenting force of foreign vessel of war.	1572. Detention by collectors of customs.
	1573. Construction of this title.

1563. Every citizen of the United States who, within the territory or jurisdiction thereof, accepts and exercises a commission to serve a foreign prince, state, colony,

Accepting a foreign commission.  
Apr. 20, 1818, c.  
88, s. 1, v. 3, p. 447.  
Sec. 5281, R. S.

1890, and March 3, 1891, sec. 24), by which he is expressly empowered to use the Army in execution of such statutes, *held* that the President would not be authorized to employ as a posse comitatus, or otherwise, the military forces to aid in enforcing the regulations established by the Secretary of the Interior for the care and management of such lands. Such employment, if permitted, would render the troops trespassers and liable to civil suits and prosecutions. (*Ibid.*, 165, par. 9.)

## USE OF FORCE IN THE EXECUTION OF THE LAW.

The following paragraphs of the Army Regulations of 1895 contain instructions as to the manner in which troops shall be employed:

Officers of the Army will not permit troops under their command to be used to aid the civil authorities as a posse comitatus, or in execution of the laws, except as provided in the foregoing paragraphs (paragraphs 1265-1329, inclusive). (Par. 485, A. R., 1895.)

If time will admit, applications for the use of troops for such purposes must be forwarded, with statements of all material facts, for the consideration and action of the President; but in case of sudden and unexpected invasion, insurrection, or riot, endangering the public property of the United States, or in case of attempted or threatened robbery or interruption of the United States mails, or other equivalent emergency so imminent as to render it dangerous to await instructions requested through the speediest means of communications, an officer of the Army may take such action before the receipt of instructions as the circumstances of the case and the law under which he is acting may justify, and will promptly report his action and the circumstances requiring it to the Adjutant-General of the Army by telegraph, if possible, for the information of the President. (Par. 489, *ibid.*)

In the enforcement of the laws troops are employed as a part of the military power of the United States, and act under the orders of the President as Commander in Chief. They can not be directed to act under the orders of any civil officer. The commanding officers of troops so employed are directly responsible to their military superiors. Any unlawful or unauthorized act on their part would not be excusable on the ground of an order or request received by them from a marshal or any other civil officer. (Par. 490, *ibid.*)

Troops called into action against a mob forcibly resisting or obstructing the execution of the laws of the United States, or attempting to destroy property belonging to or under the protection of the United States, are governed by the general regulations of the Army and apply military tactics in respect to the manner in which they shall act to accomplish the desired end. It is purely a tactical question in what manner they shall use the weapons with which they are armed—whether by fire of musketry and artillery or by the use of the bayonet and saber, or by both, and at what stage of the operations each or either mode of attack shall be employed. This tactical question will be decided by the immediate commander of the troops, according to his judgment of the situation. The fire of troops should be withheld until timely warning has been given to the innocent who may be mingled with the mob. Troops must never fire into a crowd unless ordered by their commanding officer, except that single selected sharpshooters may shoot down individual rioters who have fired upon or thrown missiles at the troops. As a general rule the bayonet alone should be used against mixed crowds in the first stages of a revolt. But as soon as sufficient warning has been given to enable the innocent to separate themselves from the guilty, the action of the troops should be governed solely by the tactical considerations involved in the duty they are ordered to perform. They should make their blows so effective as to promptly suppress all resistance to lawful authority, and should stop the destruction of life the moment lawless resistance has ceased. Punishment belongs not to the troops, but to the courts of justice. (Par. 491, *ibid.*)

<sup>1</sup>The neutrality act has been uniformly treated by the Executive Departments and by judges of the United States courts as embracing warlike enterprises set on

district, or people, in war, by land or by sea, against any prince, state, colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not more than two thousand dollars, and imprisoned not more than three years.<sup>1</sup>

Enlisting in  
foreign service.  
Sec. 2, *ibid.*, p.  
448.

Sec. 5282, R. S.

1564. Every person who, within the territory or jurisdiction of the United States, enlists or enters himself, or hires or retains another person to enlist or enter himself, or to go beyond the limits or jurisdiction of the United States with intent to be enlisted or entered in the service of any foreign prince, state, colony, district, or people, as a soldier, or as a marine or seaman, on board of any vessel of war, letter of marque, or privateer, shall be deemed guilty of high misdemeanor, and shall be fined not more than one thousand dollars, and imprisoned not more than three years.<sup>2</sup>

Arming vessels  
against people at  
peace with the  
United States.

Sec. 3, *ibid.*  
Sec. 5283, R. S.

1565. Every person who, within the limits of the United States, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly is concerned in the furnishing, fitting out, or arming, of any vessel, with intent that such vessel shall be employed in the service of any foreign prince or state, or of any colony, district, or people, to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, or who issues or delivers a commission within the territory or jurisdiction of the United States, for any vessel, to the intent that she may be so employed, shall be deemed guilty of a high misdemeanor, and shall be fined not more than ten thousand dollars, and imprisoned not more than three years. And every such vessel, with her tackle, apparel, and furniture, together with all materials, arms, ammunition, and stores, which may have been procured for the building and equipment thereof,

foot in this country against a friendly power at peace with all the world. (U. S. v. Sullivan, 9 N. Y. Leg. Obs., 257.)

The organization in one country or State of combinations to aid or abet rebellion in another or in any other way to act on its political institutions, is a violation of national amity and comity, and an act of semihostile interference with the affairs of other peoples. \* \* \* But there is no municipal law to forbid and punish such combinations, either in the United States or Great Britain. (8 Opin. Att. Gen., 216.)

<sup>1</sup> The policy of this country is, and ever has been, a perfect neutrality and non-interference in the quarrels of other nations. (3 Opin. Att. Gen., 739.)

The act of April 30, 1818, like that of June 5, 1794, was intended to secure, beyond all risk of violation, the neutrality and pacific policy which they consecrate as our fundamental law. (Ibid., 741.)

<sup>2</sup> The enlistment of seamen or others for marine service on Mexican steamers in New York, they not being Mexicans transiently within the United States, is a clear violation of this section, and the persons enlisted, as well as the officers enlisting them, are liable to the penalties thereby incurred. (4 Opin. Att. Gen., 336.)

This section applies to foreign consuls raising troops in the United States for the military service of Great Britain. (7 *ibid.*, 367.) It does not apply to those who go abroad for foreign enlistment, or to those who transport such persons. (U. S. v. Kazinski, 2 Sprague, 7.) The enlistment must be made within the territory of the United States, and the section does not apply to one who goes abroad with intent there to enlist. (Ibid.) The words "soldier" and "enlist" as used in this section are to be understood in their technical sense. (Ibid.)

shall be forfeited; one-half to the use of the informer, and the other half to the use of the United States.<sup>1</sup>

**1566.** Every citizen of the United States who, without the limits thereof, fits out and arms, or attempts to fit out and arm, or procures to be fitted out and armed, or knowingly aids or is concerned in furnishing, fitting out, or arming any private vessel of war, or privateer, with intent that such vessel shall be employed to cruise, or commit hostilities, upon the citizens of the United States, or their property, or who takes the command of, or enters on board of any such vessel, for such intent, or who purchases any interest in any such vessel, with a view to share in the profits thereof, shall be deemed guilty of a high misdemeanor, and fined not more than ten thousand dollars, and imprisoned not more than ten years. And the trial for such offense, if committed without the limits of the United States, shall be in the district in which the offender shall be apprehended or first brought.

Arming vessel to cruise against citizens of the United States.  
Sec. 4, *ibid.*  
Sec. 5284, R. S.

**1567.** Every person who, within the territory or jurisdiction of the United States, increases or augments, or procures to be increased or augmented, or knowingly is con-

Augmenting force of foreign vessel of war.  
Sec. 5, *ibid.*  
Sec. 5285, R. S.

<sup>1</sup> To constitute an offense under this section, the vessel must be fitted out and armed with the specific intent. (*U. S. v. Skinner*, 1 Brun. Coll. Cases.) It is not necessary that the vessel should be armed or manned, for the purpose of committing hostilities, before she leaves the United States, if it is the intention that she shall be so fitted subsequently (*The City of Mexico*, 28 F. R., 148), or if the separate parts of the expedition are to be united on the high seas. (*U. S. v. The Mary N. Hogan*, 18 Fed. Rep., 529, and 20 *ibid.*, 50.)

The status of the insurgent party will be regarded by the courts as it is regarded by the political or executive departments of the United States at the time of the commission of the alleged offense. (*Gelston v. Hoyt*, 3 Wheat., 246, 324; *U. S. v. Palmer*, *ibid.*, 610, 625; *Kennett v. Chambers*, 14 How., 38; *Wharton*, Int. Law Dig., 551, 552; *U. S. v. Trumbull*, 48 F. R., 99, 104.) The word "people," as used in this section, "is one of the denominations applied by the act of Congress to a foreign power." (*U. S. v. Quincy*, 6 Pet., 445.)

I know of no law or regulation which forbids any person, or Government, whether the political designation be real or assumed, from purchasing arms from the citizens of the United States and shipping them at the risk of the purchaser. (10 Opin. Att. Gen., 452.) The sending of munitions of war from a neutral country to a belligerent port for sale, as articles of commerce, is unlawful only as subjecting such property to capture. (*The Santissima Trinidad*, 7 Wheat., 283; *The City of Mexico*, 24 F. R., 924.) It is the right of a belligerent to purchase goods and instruments of war in a neutral nation, but it may be denied by a law passed for such purpose. (10 Opin. Att. Gen., 61.)

The provisions of this section do not apply to a vessel which receives arms and munitions of war in this country, as cargo merely, with intent to carry them to a party of insurgents in a foreign country, but not with the intent that they shall constitute any part of the fittings or furnishings of the vessel herself. (*U. S. v. The Itata*, 56 F. R., 608; *U. S. v. 2,000 Cases of Rifles*, *ibid.*) A vessel is not liable to forfeiture under this section, nor is she liable to condemnation as piratical on the ground that she is in the employ of an insurgent party which has not been recognized by the United States as having belligerent rights. (*U. S. v. The Itata*, 56 F. R., 608; *U. S. v. Weed*, 5 Wall., 62; *The Watchful*, 6 Wall., 91.)

In the case of the *Horsa*, decided on appeal in the Supreme Court of the United States on May 25, 1896, it was held "that any combination of men organized to go to Cuba to make war upon its Government, provided with arms and ammunition, constitutes a military expedition. It is not necessary that the men shall be drilled, put in uniform, or prepared for efficient service, nor that they shall have been organized as or according to the tactics or rules which relate to what is known as infantry, cavalry, or artillery. It is sufficient that they shall have combined and organized here to go there and make war on a foreign Government, and to have provided themselves with the means of doing so. Whether such provision, as by arming, etc., is necessary need not be decided in this case. Nor is it important that they intended to make war as an independent body or in connection with others. Where men go without such combination and organization to enlist as individuals in a foreign army, they do not constitute such military expedition, and the fact that the vessel carrying them might carry arms as merchandise would not be important." See also *The Estrella*, 4 Wh., 298; *The Gran Para*, 7 Wh., 471; *The Santa Maria*, 7 Wh., 490; *The Monte Allegre*, 7 Wh., 520; *U. S. v. Reyburn*, 6 Pet., 352; *U. S. v. Quincy*, 6 Pet., 445.

cerned in increasing or augmenting, the force of any ship of war, cruiser, or other armed vessel, which, at the time of her arrival within the United States, was a ship of war, or cruiser, or armed vessel, in the service of any foreign prince or state, or of any colony, district, or people, or belonging to the subjects or citizens of any such prince or state, colony, district, or people, the same being at war with any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, by adding to the number of the guns of such vessel, or by changing those on board of her for guns of a larger caliber, or by adding thereto any equipment solely applicable to war, shall be deemed guilty of a high misdemeanor, and shall be fined not more than one thousand dollars and be imprisoned not more than one year.<sup>1</sup>

Military expeditions against people at peace with the United States.

Sec. 6, *ibid.*, p. 449.

Sec. 5286, R. S.

**1568.** Every person who, within the territory or jurisdiction of the United States, begins, or sets on foot, or provides or prepares the means for, any military expedition or enterprise, to be carried on from thence against the territory or dominions of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace, shall be deemed guilty of a high misdemeanor, and shall be fined not exceeding three thousand dollars, and imprisoned not more than three years.<sup>2</sup>

Enforcement of foregoing provisions.

Sec. 8, *ibid.*

Feb. 18, 1875, c. 80, v. 18, p. 320.

Sec. 5287, R. S.

**1569.** The district courts shall take cognizance of all complaints, by whomsoever instituted, in cases of captures made within the waters of the United States, or within a marine league of the coasts or shores thereof. In every case in which a vessel is fitted out and armed, or attempted to be fitted out and armed, or in which the force of any vessel of war, cruiser, or other armed vessel is increased or augmented, or in which any military expedition or enterprise is begun or set on foot, contrary to the provisions and prohibitions of this Title; and in every case of the capture of a vessel within the jurisdiction or protection of the

<sup>1</sup> The repair of Mexican war steamers in the port of New York, together with the augmenting their force by adding to the number of their guns, or by changing those originally on board for those of larger caliber, or by the addition of any equipment solely applicable to war, is a violation of this section. But the repair of their bottoms or copper, etc., does not constitute any increase or augmentation of force within the meaning of the act, and the steamers are not liable to seizure by any judicial process under it. (4 Opin. Att. Gen., 336.)

The taking on of a crew of American citizens, or of aliens domiciled in the United States, would constitute a violation of this section. (The *Alerta*, 9 Cranch, 359.)

<sup>2</sup> When a party of insurgents, already organized and carrying on war against the government of a foreign country, send a vessel to procure arms and ammunition in the United States, the act of purchasing such arms and ammunition and placing them aboard the vessel is not within the scope of this section which prescribes a penalty for every person who, within the limits of the United States, begins or sets on foot, or prepares or provides the means for any military expedition or enterprise "to be carried on from thence." Such expeditions and enterprises must originate within the jurisdiction of the United States, and the terms of the statute do not apply to an expedition originating within the territory of a foreign state. (U. S. v. Trumbull, 48 F. R., 99.) For liability of the officers of the ship, see U. S. v. Rand, 17 *ibid.*, 142.

United States as before defined; and in every case in which any process issuing out of any court of the United States is disobeyed or resisted by any person having the custody of any vessel of war, cruiser or other armed vessel of any foreign prince or state, or of any colony, district, or people, or of any subjects or citizens of any foreign prince or state, or of any colony, district, or people, it shall be lawful for the President, or such other person as he shall have empowered for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, for the purpose of taking possession of and detaining any such vessel, with her prizes, if any, in order to the execution of the prohibitions and penalties of this Title, and to the restoring of such prizes in the cases in which restoration shall be adjudged; and also for the purpose of preventing the carrying on of any such expedition or enterprise from the territories or jurisdiction of the United States against the territories or dominions of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace.

1570. It shall be lawful for the President, or such person as he shall empower for that purpose, to employ such part of the land or naval forces of the United States, or of the militia thereof, as shall be necessary to compel any foreign vessel to depart the United States in all cases in which, by the laws of nations or the treaties of the United States, she ought not to remain within the United States.

Compelling foreign vessels to depart.  
Apr. 20, 1818, c. 88, s. 9, v. 3, p. 449.  
Sec. 5288, R. S.

1571. The owners or consignees of every armed vessel sailing out of the ports of the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.<sup>1</sup>

Armed vessels to give bond on clearance.  
Sec. 10, *ibid.*  
Sec. 5289, R. S.

1572. The several collectors of the customs shall detain any vessel manifestly built for warlike purposes, and about to depart the United States, the cargo of which principally consists of arms and munitions of war, when the number of men shipped on board, or other circumstances, render it

Detention by collectors of customs.  
Apr. 20, 1818, c. 88, s. 11, p. 450.  
Sec. 5290, R. S.

<sup>1</sup>The law does not prohibit armed vessels belonging to citizens of the United States from sailing out of our ports; it only requires the owners to give security that such vessels shall not be employed by them to commit hostilities against foreign powers at peace with the United States. (U. S. v. Quincy, 5 Pet., 445.)

probable that such vessel is intended to be employed by the owners to cruise or commit hostilities upon the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people with whom the United States are at peace, until the decision of the President is had thereon, or until the owner gives such bond and security as is required of the owners of armed vessels by the preceding section.

Construction of this title.

Secs. 2, 13, *ibid.*, v. 3, pp. 448, 450.

Sec. 5291, R. S.

**1573.** The provisions of this Title shall not be construed to extend to any subject or citizen of any foreign prince, state, colony, district, or people who is transiently within the United States, and enlists or enters himself on board of any vessel of war, letter of marque, or privateer, which at the time of its arrival within the United States was fitted and equipped as such, or hires or retains another subject or citizen of the same foreign prince, state, colony, district, or people, who is transiently within the United States, to enlist or enter himself to serve such foreign prince, state, colony, district, or people, on board such vessel of war, letter of marque, or privateer, if the United States shall then be at peace with such foreign prince, state, colony, district, or people. Nor shall they be construed to prevent the prosecution or punishment of treason, or of any piracy defined by the laws of the United States.

#### EXTRADITION.

Protection of the accused.

Mar. 3, 1869, c. 141, s. 1, v. 15, p. 337.

Sec. 5275, R. S.

**1574.** Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any crime of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safe-keeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the crimes or offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such crimes or offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safe-keeping and protection of the accused.

Powers of agent receiving offenders delivered by a foreign Government.

Sec. 2, *ibid.*, p. 338.

Sec. 5276, R. S.

**1575.** Any person duly appointed as agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the jurisdiction of the United States, and to convey him to the place of his trial, shall have all the powers

of a marshal of the United States, in the several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safe-keeping.

**1576.** Every person who knowingly and willfully obstructs, resists, or opposes such agent in the execution of his duties, or who rescues or attempts to rescue such prisoner, whether in the custody of the agent or of any officer or person to whom his custody has lawfully been committed, shall be punishable by a fine of not more than one thousand dollars, and by imprisonment for not more than one year.

Penalty for opposing agent, etc.  
Sec. 3, *ibid.*  
Sec. 5277, R. S.

#### GUANO ISLANDS.

Par.	Par.
1577. Claim of United States to islands.	1581. Restrictions upon exportation.
1578. Notice of discovery and proofs to be furnished.	1582. Regulation of guano trade.
1579. Completion of proof in case of death of discoverer.	1583. Criminal jurisdiction.
1580. Exclusive privileges of discoverer.	1584. Employment of land and naval forces.
	1585. Right to abandon island.

**1577.** Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States.

Claim of United States to islands.  
Aug. 18, 1856, c. 164, s. 1, v. 11, p. 119.  
Sec. 5570, R. S.

**1578.** The discoverer shall, as soon as practicable, give notice, verified by affidavit, to the Department of State, of such discovery, occupation, and possession, describing the island, rock, or key, and the latitude and longitude thereof, as near as may be, and showing that such possession was taken in the name of the United States; and shall furnish satisfactory evidence to the State Department that such island, rock, or key was not, at the time of the discovery thereof, or of the taking possession and occupation thereof by the claimants, in the possession or occupation of any other government or of the citizens of any other government, before the same shall be considered as appertaining to the United States.

Notice of discovery and proofs to be furnished.  
*Ibid.*  
Sec. 5571, R. S.

**1579.** If the discoverer dies before perfecting proof of discovery or fully complying with the provisions of the preceding section, his widow heir, executor, or administrator, shall be entitled to the benefits of such discovery,

Completion of proof in case of death of discoverer.  
Apr. 2, 1872, c. 81, s. 1, v. 17, p. 48.  
Sec. 5572, R. S.



upon complying with the provisions of this Title; but nothing herein shall be held to impair any rights of discovery or any assignment by a discoverer heretofore recognized by the United States.

Exclusive privileges of discoverer.

Aug. 18, 1856, c. 164, s. 2, v. 11, p. 119.

Sec. 5573, R. S.

**1580.** The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such island, rocks, or keys, for the purpose of obtaining guano, \* \* \* and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship's tackle, a sum not exceeding eight dollars per ton for the best quality, or four dollars for every ton taken while in its native place of deposit.

Restrictions upon exportation.

*Ibid.*  
July 28, 1866, c. 298, s. 3, v. 14, p. 328; Apr. 2, 1872, c. 81, s. 1, v. 17, p. 48.

Sec. 5574, R. S.

**1581.** No guano shall be taken from any such island, rock, or key, except for the use of the citizens of the United States or of persons resident therein. The discoverer, or his widow, heir, executor, administrator, or assigns, shall enter into bond, in such penalty and with such sureties as may be required by the President, to deliver the guano to citizens of the United States, for the purpose of being used therein, and to none others, and at the price prescribed, and to provide all necessary facilities for that purpose within a time to be fixed in the bond; \* \* \* This section shall, however, be suspended in relation to all persons who have complied with the provisions of this Title, for five years from and after the fourteenth day of July, eighteen hundred and seventy-two.<sup>1</sup>

Regulation of guano trade.

Aug. 18, 1856, c. 164, s. 3, v. 11, p. 120.

Sec. 5575, R. S.

**1582.** The introduction of guano from such islands, rocks, or keys, shall be regulated as in the coasting-trade between different parts of the United States, and the same laws shall govern the vessels concerned therein.

Criminal jurisdiction.

Sec. 5, *ibid.*  
Sec. 5576, R. S.

**1583.** All acts done, and offenses or crimes committed, on any such island, rock, or key, by persons who may land thereon, or in the waters adjacent thereto, shall be deemed committed on the high seas, on board a merchant-ship or vessel belonging to the United States; and shall be punished according to the laws of the United States relating to such ships or vessels and offenses on the high seas, which laws for the purpose aforesaid are extended over such islands, rocks, and keys.

Employment of land and naval forces.

Sec. 5, *ibid.*  
Sec. 5577, R. S.

**1584.** The President is authorized, at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer or of his widow, heir, executor, administrator, or assigns.

<sup>1</sup> This section was suspended for five years by the act of March 15, 1878 (20 Stat. L., 30), and for a further period of five years by the act of April 14, 1884 (23 Stat. L., 11).

**1585.** Nothing in this Title contained shall be construed as obliging the United States to retain possession of the islands, rocks, or keys, after the guano shall have been removed from the same.

Right to abandon islands.  
Sec. 4, *ibid.*  
Sec. 5578, R. S.

## TREASON.

**1586.** Every person owing allegiance to the United States who levies war against them, or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason.<sup>1</sup>

Treason.  
Apr. 30, 1790, c. 9, s. 1, v. 1, p. 112;  
Mar. 3, 1875, c. 145, v. 18, pp. 479, 480.  
Sec. 5331, R. S.

**1587.** Every person guilty of treason shall suffer death; or, at the discretion of the court, shall be imprisoned at hard labor not less than five years, and fined not less than ten thousand dollars, to be levied on and collected out of any or all of his property, real and personal, of which he was the owner at the time of committing such treason, any sale or conveyance to the contrary notwithstanding; and every person so convicted of treason shall, moreover, be incapable of holding any office under the United States.<sup>2</sup>

Punishment of treason.  
July 17, 1862, c. 193, ss. 1, 3, v. 12, p. 589.  
Sec. 5332, R. S.

**1588.** Every person owing allegiance to the United States and having knowledge of the commission of any treason against them, who conceals, and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor, or to some judge or justice of a particular State, is guilty of misprision of treason, and shall be imprisoned not more than seven years, and fined not more than one thousand dollars.

Misprision of treason.  
Apr. 30, 1790, c. 9, s. 2, v. 1, p. 112.  
U. S. v. Wiltberger, 5 Wh., 97;  
Confiscation cases, 1 Woods, 221; U. S. v. Tract of Land, 1 Woods, 475.  
Sec. 5333, R. S.

**1589.** Every person who incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States, or the laws thereof, or gives aid or comfort thereto, shall be punished by imprisonment not more than ten years, or by a fine of not more than ten thousand dollars, or by both of such punishments; and shall, moreover, be incapable of holding any office under the United States.

Inciting or engaging in rebellion or insurrection.  
July 17, 1862, c. 193, s. 2, v. 12, p. 590.  
Sec. 5334, R. S.

**1590.** Every citizen of the United States, whether actually resident or abiding within the same, or in any foreign country, who, without the permission or authority of the Government, directly or indirectly, commences or carries on any verbal or written correspondence or intercourse with any foreign government, or any officer or agent thereof,

Criminal correspondence with foreign governments.  
Jan. 30, 1799, c. 1, v. 1, p. 613.  
Sec. 5335, R. S.

<sup>1</sup>Gearing v. U. S., 3 N. & H., 165.

<sup>2</sup>U. S. v. The Insurgents, 2 Dall., 385; U. S. v. Mitchell, 2 Dall., 348; U. S. v. Vilato, 2 Dall., 370; Ex parte Bolman and Swartwout, 4 Cr., 75; U. S. v. Pryor, 3 Wash., 234; U. S. v. Hanway, 2 Wall. Jr. C. C., 139; 1 Burr's Trial, 14-16; 2 Burr's Trial, 402, 405, 417; U. S. v. Hoxie, 1 Paine, 265; U. S. v. Greathouse, 2 Abb. C. C., 364; Confiscation Cases, 20 Wall., 92; Wallack et al. v. Van Renswick, 92 U. S., 202; Windsor v. McVeigh, 93 U. S., 274.

with an intent to influence the measures or conduct of any foreign government or of any officer or agent thereof, in relation to any disputes or controversies with the United States, or to defeat the measures of the Government of the United States; and every person, being a citizen of, or resident within, the United States, and not duly authorized, who counsels, advises, or assists in any such correspondence, with such intent, shall be punished by a fine of not more than five thousand dollars, and by imprisonment during a term not less than six months, nor more than three years; but nothing in this section shall be construed to abridge the right of a citizen to apply, himself or his agent, to any foreign government, or the agents thereof, for redress of any injury which he may have sustained from such government, or any of its agents or subjects.

Seditious conspiracy.

July 31, 1861, c. 33, v. 12, p. 284; Apr. 20, 1871, c. 22, s. 2, v. 17, p. 13.

*Ex parte* Lange, 18 Wall., 163.

Sec. 5336, R. S.

**1591.** If two or more persons in any State or Territory conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof; or by force to prevent, hinder, or delay the execution of any law of the United States; or by force to seize, take, or possess any property of the United States contrary to the authority thereof; each of them shall be punished by a fine of not less than five hundred dollars and not more than five thousand dollars; or by imprisonment, with or without hard labor, for a period not less than six months, nor more than six years, or by both such fine and imprisonment.

Recruiting soldiers or sailors to serve against the United States.

Aug. 6, 1861, c. 56, s. 1, v. 12, p. 317.

Sec. 5337, R. S.

**1592.** Every person who recruits soldiers or sailors within the United States to engage in armed hostility against the same, or who opens within the United States a recruiting station for the enlistment of such soldiers or sailors, to serve in any manner in armed hostility against the United States, shall be fined not less than two hundred dollars, nor more than one thousand dollars, and imprisoned not less than one year, nor more than five years.

Enlistment to serve against the United States.

Sec. 2, *ibid.*

Sec. 5338, R. S.

**1593.** Every soldier or sailor enlisted or engaged within the United States, with intent to serve in armed hostility against the same, shall be punished by a fine of one hundred dollars, and by imprisonment not less than one year, nor more than three years.



## CHAPTER XXXIX.

### PENSIONS.

Par.	Par.
1594-1612. The general pension law.	1655-1663. Declarations and evidence in pension cases.
1617-1629. Widows, children, and dependent relations.	1664-1666. Accrued and unclaimed pensions.
1630-1632. Pensions under special acts.	1667-1673. Attorney's fees.
1633, 1634. Mexican war pensions.	1674-1683. Payment of pensions.
1635, 1636. Pensions for Indian wars prior to 1842.	1684. Duplicate checks.
1637-1640. The dependent pension law.	1685-1692. Special examinations.
1641-1642. Pensions to army nurses, etc.	1693, 1694. Fees of examining surgeons.
1643-1654. Commencement and arrears of pension, etc.	1695, 1696. Assignment of pensions.
	1697-1699. Investigations.
	1700-1710. Miscellaneous provisions.

### THE GENERAL PENSION LAW.

1594. Every person specified in the several classes enumerated in the following section, who has been, since the fourth day of March, eighteen hundred and sixty-one, or who is hereafter disabled under the conditions therein stated, shall, upon making due proof of the fact, according to such forms and regulations as are or may be provided in pursuance of law, be placed on the list of invalid pensioners of the United States, and be entitled to receive, for a total disability, or a permanent specific disability, such pension as is hereinafter provided in such cases; and for an inferior disability, except in cases of permanent specific disability, for which the rate of pension is expressly provided, an amount proportionate to that provided for total disability; and such pension shall commence as hereinafter provided, and continue during the existence of the disability.<sup>1</sup>

Who may have pensions.  
Mar. 3, 1873, c. 234, s. 1, v. 17, pp. 566, 567.  
Sec. 4692, R. S.

<sup>1</sup>The act of March 3, 1883 (23 Stat. L., 362), contains the requirement that "all applicants for pension shall be presumed to have had no disability at the time of enlistment, but such presumption may be rebutted."

Classes enumerated.

**1595.** The persons entitled as beneficiaries under the preceding section are as follows:

Officers of Army and Navy, and enlisted men, etc.

*Ibid.*

Sec. 4693, R. S.

First. Any officer of the Army, including regulars, volunteers, and militia, or any officer in the Navy or Marine Corps, or any enlisted man, however employed, in the military or naval service of the United States, or in its Marine Corps, whether regularly mustered or not, disabled by reason of any wound or injury received, or disease contracted, while in the service of the United States and in the line of duty.<sup>1</sup>

Master, etc., serving on gun-boat, etc.

Second. Any master serving on a gun-boat, or any pilot, engineer, sailor, or other person not regularly mustered, serving upon any gun-boat or war-vessel of the United States, disabled by any wound or injury received, or otherwise incapacitated while in the line of duty, for procuring his subsistence by manual labor.

Volunteers, not enlisted, etc.

Third. Any person not an enlisted soldier in the Army, serving for the time being as a member of the militia of any State, under orders of an officer of the United States, or who volunteered for the time being to serve with any regularly organized military or naval force of the United States, or who otherwise volunteered and rendered service in any engagement with rebels or Indians, disabled in consequence of wounds or injury received in the line of duty in such temporary service. But no claim of a State militiaman, or nonenlisted person, on account of disability from wounds, or injury received in battle with rebels or Indians, while temporarily rendering service, shall be valid unless prosecuted to a successful issue prior to the fourth day of July, eighteen hundred and seventy-four.

Acting assistant surgeon, etc.

Fourth. Any acting assistant or contract surgeon disabled by any wound or injury received or disease contracted in the line of duty while actually performing the duties of assistant surgeon or acting assistant surgeon with any military force in the field, or in transitu, or in hospital.

Provost-marshal, etc.

Fifth. Any provost-marshal, deputy provost-marshal, or enrolling-officer disabled, by reason of any wound or injury, received in the discharge of his duty, to procure a subsistence by manual labor.

Pension for wounds received or diseases contracted only in line of duty, etc.

*Ibid.*, p. 567.

Sec. 4694, R. S.

**1596.** No person shall be entitled to a pension by reason of wounds or injury received or disease contracted in the service of the United States subsequent to the twenty-seventh day of July, eighteen hundred and sixty-eight, unless the person who was wounded, or injured, or

<sup>1</sup> For statutes regulating the remuster of officers, see the joint resolution of July 26, 1866 (14 Stat. L., 368), June 3, 1884 (23 Stat. L., 35), and February 3, 1887 (24 Stat. L., 377).

contracted the disease was in the line of duty; and, if in the military service, was at the time actually in the field, or on the march, or at some post, fort, or garrison, or en route, by direction of competent authority, to some post, fort, or garrison; or, if in the naval service, was at the time borne on the books of some ship or other vessel of the United States, at sea or in harbor, actually in commission, or was at some naval station, or on his way, by direction of competent authority, to the United States, or to some other vessel or naval station, or hospital.

**1597.** The pension for total disability shall be as follows, Rates of pension for total disability. Sec. 2, *ibid.*, p. 567. Sec. 4695, R. S. namely: For lieutenant-colonel and all officers of higher rank in the military service and in the Marine Corps, and for captain, and all officers of higher rank, commander, surgeon, paymaster, and chief engineer, respectively ranking with commander by law, lieutenant commanding and master commanding, in the naval service, thirty dollars per month; for major in the military service and in the Marine Corps, and lieutenant, surgeon, paymaster, and chief engineer, respectively ranking with lieutenant by law, and passed assistant surgeon in the naval service, twenty-five dollars per month; for captain in the military service and in the Marine Corps, chaplain in the Army, and provost-marshal, professor of mathematics, master, assistant surgeon, assistant paymaster, and chaplain in the naval service, twenty dollars per month; for first lieutenant in the military service and in the Marine Corps, acting assistant or contract surgeon, and deputy provost-marshal, seventeen dollars per month; for second lieutenant in the military service and in the Marine Corps, first assistant engineer, ensign, and pilot in the naval service, and enrolling-officer, fifteen dollars per month; for cadet-midshipman, passed midshipman, midshipmen, clerks of admirals and paymasters and of other officers commanding vessels, second and third assistant engineer, master's mate, and all warrant-officers in the naval service, ten dollars per month; and for all other persons whose rank or office is not mentioned in this section, eight dollars per month; and the masters, pilots, engineers, sailors, and crews upon the gun-boats and war-vessels shall be entitled to receive the pension allowed herein to those of like rank in the naval service.<sup>1</sup>

**1598.** Every commissioned officer of the Army, Navy, or Marine Corps shall receive such and only such pension as Pension according to rank. *Ibid.* Sec. 4696, R. S.

<sup>1</sup>By section 4692, Revised Statutes (paragraph 1594, *supra*), an inferior disability shall be rated in proportion to that for total disability.

is provided in the preceding section, for the rank he held at the time he received the injury or contracted the disease which resulted in the disability, on account of which he may be entitled to a pension; and any commission or presidential appointment, regularly issued to such person, shall be taken to determine his rank from and after the date, as given in the body of the commission or appointment conferring said rank: *Provided*, That a vacancy existed in the rank thereby conferred; that the person commissioned was not disabled for military duty; and that he did not willfully neglect or refuse to be mustered.

Pensions for permanent specific disability prior to June 4, 1872.

Sec. 3, *ibid.*, p. 568.

Feb. 28, 1877, c. 73, v. 19, p. 264.

Sec. 4697, R.S.

**1599.** For the period commencing July fourth, eighteen hundred and sixty-four, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who shall have lost both feet<sup>1</sup> in the military or naval service and in the line of duty, shall be entitled to a pension of twenty dollars per month; for the same period those persons who, under like circumstances, shall have lost both hands<sup>1</sup> or the sight of both eyes,<sup>1</sup> shall be entitled to a pension of twenty-five dollars per month; and for the period commencing March third, eighteen hundred and sixty-five, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand and one foot, shall be entitled to a pension of twenty dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons who under like circumstances shall have lost one hand or one foot, shall be entitled to a pension of fifteen dollars per month; and for the period commencing June sixth, eighteen hundred and sixty-six, and ending June third, eighteen hundred and seventy-two, those persons entitled to a less pension than hereinafter mentioned, who by reason of injury received or disease contracted in the military or naval service of the United States and in the line of duty, shall have been permanently and totally disabled in both hands, or who shall have lost the sight of one eye, the other having been previously lost, or who shall have been otherwise so totally and permanently disabled as to render them utterly helpless, or so nearly so as to require regular personal aid and attendance of another person, shall be entitled to a pension of twenty-five dollars per month; and for the same period those who under like circumstances shall have been totally and permanently disabled in both feet, or in one

<sup>1</sup> By the act of June 18, 1874 (18 Stat. L., 78), this rate was fixed at \$50 per month.

hand and one foot, or otherwise so disabled as to be incapacitated for the performance of any manual labor, but not so much as to require regular personal aid and attention, shall be entitled to a pension of twenty dollars per month; and for the same period all persons who under like circumstances shall have been totally and permanently disabled in one hand, or one foot, or otherwise so disabled as to render their inability to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of fifteen dollars per month.

**1600.** That all persons who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand and one foot, or been totally and permanently disabled in both, shall be entitled to a pension for each of such disabilities, and at such a rate as is provided for by the provisions of the existing laws for each disability: *Provided*, That this act shall not be so construed as to reduce pensions in any case. *Act of February 28, 1877* (19 Stat. L., 264).

Pensions for  
loss of one hand  
and one foot.  
Feb. 28, 1877, v.  
19, p. 264.

**1601** Whereas, it is apparent that the present pension paid to soldiers and sailors who have lost both their hands or both their feet in the service of the country is greatly inadequate to the support of such as have families: Therefore,

Preamble.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That on and after the passage of this act, all soldiers and sailors who have lost either both their hands or both their feet or the sight of both eyes in the service of the United States, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid to them, in the same manner as pensions are now paid to such persons, the sum of seventy two dollars per month. *Act of June 17, 1878* (20 Stat. L., 144).

Pension for  
loss of both  
hands, feet, or  
eyes.  
June 17, 1878, v.  
20, p. 144.

**1602.** That the act of June seventeenth, eighteen hundred and seventy eight, entitled "An act to increase the pensions of certain soldiers and sailors who have lost both their hands or both their feet, or the sight of both eyes, in the service of the country", be so construed as to include all soldiers and sailors who have become totally blind from causes occurring in the service of the United States. *Act of March 3, 1879* (20 Stat. L., 484).

For total blind-  
ness.  
Mar. 3, 1879, v.  
20, p. 484.

**1603.** That all pensioners now on the pension-rolls, or who may hereafter be placed thereon, for amputation of either leg at the hip joint, shall receive a pension at the rate of thirty-seven dollars and fifty cents per month from

Rate for loss of  
leg at hip joint.  
Mar. 3, 1879, v.  
20, p. 483.



the date of the approval of this act. *Act of March 3, 1879*  
(20 Stat. L., 483).

Increase of  
pension of sol-  
diers and sailors  
who have lost an  
arm or leg in serv-  
ice.

**1604.** That from and after the passage of this act all persons on the pension-roll, and all persons hereafter granted a pension, who, while in the military or naval service of the United States, and in the line of duty, shall have lost one hand or one foot, or been totally or permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss

Mar. 3, 1883, v.  
22, p. 453.

of a hand or a foot, shall receive a pension of twenty-four dollars per month; that all persons now on the pension-roll, and all persons hereafter granted a pension, who in like manner shall have lost either an arm at or above the elbow, or a leg at or above the knee, or shall have been otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall receive a pension of thirty dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision. *Act of March 3, 1883* (22 Stat. L., 453.)

Pensions, in-  
creased.

**1605.** That from and after the passage of this act all persons on the pension-rolls, and all persons hereafter granted a pension, who, while in the military or naval service of

Loss of hand  
or foot.

Aug. 4, 1886, v.  
24, p. 220.

the United States and in line of duty, shall have lost one hand or one foot, or been totally disabled in the same, shall receive a pension of thirty dollars a month; that all persons now on the pension-rolls, and all persons hereafter

Loss of arm at  
or above elbow;  
leg at or above  
knee.

granted a pension, who in like manner shall have lost either an arm at or above the elbow or a leg at or above the knee,<sup>1</sup> or been totally disabled in the same, shall receive a pension of thirty-six dollars per month; and that all persons now on the pension-rolls, and all persons, hereafter

Loss of arm at  
shoulder; leg at  
hip.

R. S., sec. 4699,  
p. 915, not re-  
pealed.

granted a pension who in like manner shall have lost either an arm at the shoulder-joint or a leg at the hip-joint, or so near the joint as to prevent the use of an artificial limb, shall receive a pension at the rate of forty-five dollars per month: *Provided*, That nothing contained in this act shall be construed to repeal section forty-six hundred and ninety-nine of the Revised Statutes of the United States, or to change the rate of eighteen dollars per month

<sup>1</sup> The act of June 18, 1874 (18 Stat. L., 78), fixed this rate at \$24 per month.

therein mentioned to be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision. *Act of August 4, 1886 (24 Stat. L., 220).*

**1606.** That all soldiers and sailors of the United States who have had an arm taken off at the shoulder-joint, caused by injuries received in the service of their country while in the line of duty, and who are now receiving pensions, shall have their pensions increased to the same amount that the law now gives to soldiers and sailors who have lost a leg at the hip-joint; and this act shall apply to all who shall be hereafter placed on the pension-roll. *Act of March 3, 1885 (23 Stat. L., 437).*

Soldiers and sailors of United States.

Pension hereafter for loss of arm at shoulder joint to be same as for loss of leg at hip joint.

Mar. 3, 1885, v. 23, p. 437.

**1607.** From and after June fourth, eighteen hundred and seventy-two, all persons entitled by law to a less pension than hereinafter specified, who, while in the military or naval service of the United States, and in line of duty, shall have lost the sight of both eyes, or shall have lost the sight of one eye, the sight of the other having been previously lost, or shall have lost both hands, or shall have lost both feet, or been permanently and totally disabled in the same, or otherwise so permanently and totally disabled as to render them utterly helpless, or so nearly so as to require the regular personal aid and attendance of another person, shall be entitled to a pension of thirty-one dollars and twenty-five cents per month; and all persons who, under like circumstances, shall have lost one hand and one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to be incapacitated for performing any manual labor, but not so much as to require regular personal aid and attendance, shall be entitled to a pension of twenty-four dollars per month; and all persons who, under like circumstances, shall have lost one hand, or one foot, or been totally and permanently disabled in the same, or otherwise so disabled as to render their incapacity to perform manual labor equivalent to the loss of a hand or foot, shall be entitled to a pension of eighteen dollars per month: *Provided*, That all persons who, under like circumstances, have lost a leg above the knee, and in consequence thereof are so disabled that they cannot use artificial limbs, shall be rated in the second class and receive twenty-four dollars per month from and after June fourth, eighteen hundred and seventy-two; and all persons who, under like circumstances, shall have lost the hearing of both ears, shall be entitled to a pension of thirteen dollars per month from the same date: *Provided*, That the pension for a disability

Pensions for permanent specific disabilities after June 4, 1872.

Mar. 3, 1873, c. 234, s. 4, v. 17, p. 569; June 18, 1874, c. 298, v. 18, p. 78; June 18, 1874, c. 299, v. 18, p. 78.

Sec. 4698, E. S.

not permanent, equivalent in degree to any provided for in this section, shall, during the continuance of the disability in such degree, be at the same rate as that herein provided for a permanent disability of like degree.

Increase of pensions.  
Soldiers and sailors utterly helpless.  
June 16, 1880, v. 21, p. 281.

**1608.** That all soldiers and sailors who are now receiving a pension of fifty dollars per month, under the provisions of an act entitled "An act to increase the pension of soldiers and sailors who have been totally disabled," approved June eighteenth, eighteen hundred and seventy-four, shall receive, in lieu of all pensions now paid them by the Government of the United States, and there shall be paid them in the same manner as pensions are now paid to such persons, the sum of seventy-two dollars<sup>1</sup> per month. *Sec. 1, act of June 16, 1880 (21 Stat. L., 281).*

The same subject.  
Sec. 2, June 16, 1880, v. 21, p. 281.

**1609.** All pensioners whose pensions shall be increased by the provisions of this act from fifty dollars per month to seventy two dollars per month shall be paid the difference between said sums monthly, from June seventeenth, eighteen hundred and seventy eight, to the time of the taking effect of this act. *Sec. 2, act of June 16, 1880 (21 Stat. L., 281).*

Pensions for loss of both hands increased.  
Feb. 12, 1889, v. 25, p. 659.

**1610.** That from and after the passage of this act all persons who, in the military or naval service of the United States and in the line of duty, have lost both hands, shall be entitled to a pension of one hundred dollars per month. *act of February 12, 1889 (25 Stat. L., 659).*

Increase to totally helpless soldiers, etc.  
Mar. 4, 1890, v. 26, p. 16.  
V. 21, p. 281.

**1611.** That all soldiers, sailors, and marines who have since the sixteenth day of June, eighteen hundred and eighty, or who may hereafter become so totally and permanently helpless from injuries received or disease contracted in the service and line of duty as to require the regular personal aid and attendance of another person, or who, if otherwise entitled, were excluded from the provisions of "An act to increase pensions of certain pensioned soldiers and sailors who are utterly helpless from injuries received or disease contracted while in the United States service," approved June sixteenth, eighteen hundred and eighty, shall be entitled to receive a pension at the rate of seventy-two dollars per month from the date of the passage of this act or of the certificate of the examining surgeon or board of surgeons showing such degree of disability made subsequent to the passage of this act. *Act of March 4, 1890 (26 Stat. L., 16).*

The same subject.

**1612.** That soldiers and sailors who are shown to be to-

<sup>1</sup>The act of June 18, 1874 (18 Stat. L., 78), fixed this rate of pension at \$50 per month.

tally incapacitated for performing manual labor by reason of injuries received or disease contracted in the service of the United States and in line of duty, and who are thereby disabled to such a degree as to require frequent and periodical, though not regular and constant, personal aid and attendance of another person, shall be entitled to receive a pension of fifty dollars per month from and after the date of the certificate of the examining surgeon or board of examining surgeons showing such degree of disability, and made subsequent to the passage of this act.<sup>1</sup> *Act of July 14, 1892 (27 Stat. L., 149).*

**1613.** The rate of eighteen dollars per month may be proportionately divided for any degree of disability established for which section forty-six hundred and ninety-five makes no provision.

**1614.** Except in cases of permanent specific disabilities, no increase of pension shall be allowed to commence prior to the date of the examining surgeon's certificate establishing the same made under the pending claim for increase; and in this, as well as all other cases, the certificate of an examining surgeon, or of a board of examining surgeons, shall be subject to the approval of the Commissioner of Pensions.

**1615.** Officers absent on sick-leave, and enlisted men absent on sick-furlough, or on veteran-furlough with the organization to which they belong, shall be regarded in the administration of the pension laws in the same manner as if they were in the field or hospital.

**1616.** The period of service of all persons entitled to the benefits of the pension-laws, or on account of whose death any person may become entitled to a pension, shall be construed to extend to the time of disbanding the organization to which such persons belonged, or until their actual discharge for other cause than the expiration of the service of such organization.

#### WIDOWS AND CHILDREN.

**1617.** If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or hereafter dies, by reason of any wound, injury, or disease which under the conditions and limitations of such sections would have entitled him to an invalid pension had he been disabled, his widow or if there be no widow, or in case of her death without payment to her of any part of the pension herein-

<sup>1</sup>The act of August 27, 1888 (25 Stat. L., 449), fixes the rate of pension for total deafness at \$30 per month.

after mentioned, his child or children under sixteen years of age, shall be entitled to receive the same pension as the husband or father would have been entitled to had he been totally disabled, to commence from the death of the husband or father, to continue to the widow during her widowhood, and to his child or children until they severally attain the age of sixteen years, and no longer; and if the widow remarry, the child or children shall be entitled from the date of remarriage, except when such widow has continued to draw the pension-money after her remarriage, in contravention of law, and such child or children have resided with and been supported by her, their pension will commence at the date to which the widow was last paid.<sup>1</sup> *Act of August 7, 1882 (22 Stat. L., 345).*

Increased pension to widows, etc.

Sec. 9, *ibid.*, p.

570.

Sec. 4703, R. S.

**1618.** The pensions of widows shall be increased from and after the twenty-fifth day of July, eighteen hundred and sixty-six at the rate of two dollars per month for each child under the age of sixteen years, of the husband on account of whose death the claim has been, or shall be, granted. And in every case in which the deceased husband has left, or shall leave, no widow, or where his widow has died or married again, or where she has been deprived of her pension under the provisions of the pension-law, the pension granted to such child or children shall be increased to the same amount per month that would be allowed under the foregoing provisions to the widow, if living and entitled to a pension: *Provided*, That the additional pension herein granted to the widow on account of the child or children of the husband by a former wife shall be paid to her only for such period of her widowhood as she has been, or shall be, charged with the maintenance of such child or children; for any period during which she has not been, or she shall not be, so charged, it shall be granted and paid to the guardian of such child or children: *Provided further*, That a widow or guardian to whom increase of pension has been, or shall hereafter be, granted on account of minor children, shall not be deprived thereof by reason of their being maintained in whole or in part at the expense of a State or the public in any educational institution, or in any institution organized for the care of soldiers' orphans.

What children deemed legitimate.

Sec. 10, *ibid.*

Sec. 4704, R. S.

**1619.** In the administration of the pension-laws, children born before the marriage of their parents, if acknowledged by the father before or after the marriage, shall be deemed legitimate.

<sup>1</sup> Amended by act of March 19, 1856 (24 Stat. L., 5). See, also, acts of June 9, 1880 (21 Stat. L., 170), and June 7, 1888 (25 Stat. L., 173).

1620. The widows of colored and Indian soldiers and sailors who have died, or shall hereafter die, by reason of wounds or injuries received, or casualty received, or disease contracted, in the military or naval service of the United States, and in the line of duty, shall be entitled to receive the pension provided by law without other evidence of marriage than satisfactory proof that the parties were joined in marriage by some ceremony deemed by them obligatory, or habitually recognized each other as man and wife, and were so recognized by their neighbors, and lived together as such up to the date of enlistment, when such soldier or sailor died in the service, or, if otherwise, to date of death; and the children born of any marriage so proved shall be deemed and held to be lawful children of such soldier or sailor, but this section shall not be applicable to any claims on account of persons who enlist after the third day of March, one thousand eight hundred and seventy-three.

Widows of colored and Indian soldiers, etc.  
Sec. 11, *ibid.*  
Sec. 4705, U. S.

1621. That marriages, except such as are mentioned in section forty-seven hundred and five of the Revised Statutes, shall be proven in pension cases to be legal marriages according to the law of the place where the parties resided at the time of marriage or at the time when the right to pension accrued; and the open and notorious adulterous cohabitation of a widow who is a pensioner shall operate to terminate her pension from the commencement of such cohabitation. *Sec. 2, act of August 7, 1882 (22 Stat. L., 345).*

Marriages to be proven legal marriages under laws, etc.  
Sec. 2, Aug. 7, 1882, v. 22, p. 345.

1622. That from and after the passage of this act the rate of pension for widows, minor children, and dependent relatives now on the pension-roll, or hereafter to be placed on the pension-roll, and entitled to receive a less rate than hereinafter provided, shall be twelve dollars per month; and nothing herein shall be construed to affect the existing allowance of two dollars per month for each child under the age of sixteen years: *Provided*, That this act shall apply only to widows who were married to the deceased soldier or sailor prior to its passage and to those who may hereafter marry prior to or during the service of the soldier or sailor. And all acts or parts of acts inconsistent with the provisions of this act are hereby repealed. *Sec. 1, act of March 19, 1886 (24 Stat. L., 5).*

Increase of pensions to widows and dependent relatives.  
Mar. 19, 1886, v. 24, p. 5.

1623. That no claim agent or attorney shall be recognized in the adjudication of claims under this act, nor shall any such person be entitled to receive any compensation whatever for services or pretended services in making applications thereunder. *Sec. 2, ibid.*

Claim agents not to be recognized.  
Sec. 2, *ibid.*

Widows' pensions to date from death of husband.  
June 7, 1888, v. 25, p. 173.

**1624.** That all pensions which have been, or which may hereafter be, granted under the general laws regulating pensions to widows in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, shall commence from the date of death of the husband. *Act of June 7, 1888 (25 Stat. L., 173).*

Abandonment, etc., by widow.  
Sec. 4706, R. S.

**1625.** If any person has died, or shall hereafter die, leaving a widow entitled to a pension by reason of his death, and a child or children under sixteen years of age by such widow, and it shall be duly certified under seal by any court having probate jurisdiction, that satisfactory evidence has been produced before such court, upon due notice to the widow, that she has abandoned the care of such child or children, or that she is an unsuitable person, by reason of immoral conduct, to have the custody of the same, on presentation of satisfactory evidence thereof to the Commissioner of Pensions, no pension shall be allowed to such widow until such child or children shall have attained the age of sixteen years, any provisions of law to the contrary notwithstanding; and the said child or children shall be pensioned in the same manner, and from the same date, as if no widow had survived such person, and such pension shall be paid to the guardian of such child or children; but if in any case payment of pension shall have been made to the widow, the pension to the child or children shall commence from the date to which her pension has been paid.

Sec. 4735, R. S.

**1626.** No pension shall be granted to a widow for the same time that her husband received one.

#### DEPENDENT RELATIVES.

Succession of dependent relatives.  
S. 13, Mar. 3, 1873, v. 17, p. 571.  
Sec. 4707, R. S.

**1627.** If any person embraced within the provisions of sections forty-six hundred and ninety-two and forty-six hundred and ninety-three has died since the fourth day of March, eighteen hundred and sixty-one, or shall hereafter die, by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of such sections, would have entitled him to an invalid pension, and has not left or shall not leave a widow or legitimate child, but has left or shall leave other relative or relatives who were dependent upon him for support, in whole or in part, at the date of his death, such relative or relatives shall be entitled, in the following order of precedence, to receive the same pension as such person would have been entitled to had he been totally disabled, to commence from the death

of such person, namely: first, the mother; secondly, the father; thirdly, orphan brothers and sisters under sixteen years of age, who shall be pensioned jointly: *Provided*, That where orphan children of the same parent have different guardians, or a portion of them only are under guardianship, the share of the joint pension to which each ward shall be entitled shall be paid to the guardian of such ward: *Provided*, That if in any case said person shall have left father and mother who were dependent upon him, then, on the death of the mother, the father shall become entitled to the pension, commencing from and after the death of the mother; and upon the death of the mother and father, or upon the death of the father and the remarriage of the mother, the dependent brothers and sisters under sixteen years of age shall jointly become entitled to such pension until they attain the age of sixteen years respectively, commencing from the death or remarriage of the party who had the prior right to the pension: *Provided*, That a mother shall be assumed to have been dependent upon her son within the meaning of this section if, at the date of his death, she had no other adequate means of support than the ordinary proceeds of her own manual labor and the contributions of said son or of any other persons not legally bound to aid in her support; and if, by actual contributions, or in any other way, the son had recognized his obligations to aid in support of his mother, or was by law bound to such support, and that a father or minor brother or sister shall, in like manner and under like conditions, be assumed to have been dependent, except that the income which was derived or derivable from his actual or possible manual labor shall be taken into account in estimating a father's means of independent support: *Provided further*, That the pension allowed to any person on account of his or her dependence, as hereinbefore provided, shall not be paid for any period during which it shall not be necessary as a means of adequate subsistence.

1628. The remarriage of any widow, dependent mother, or dependent sister, entitled to pension, shall not bar her right to such pension to the date of her remarriage, whether an application therefor was filed before or after such marriage; but on the remarriage of any widow, dependent mother, or dependent sister, having a pension, such pension shall cease.

Remarriage.  
Sec. 4708, R. S.

1629. That in considering the pension claims of dependent parents, the fact of the soldier's death by reason of any wound, injury, casualty, or disease, which, under the conditions and limitations of existing laws, would have

Disability, etc.,  
pensions.  
Granted to certain soldiers and sailors, widows, children, and dependent parents.



Claims of dependent parents.  
Evidence required.  
June 27, 1890,  
v. 26, p. 182.

entitled him to an invalid pension, and the fact that the soldier left no widow or minor children having been shown as required by law, it shall be necessary only to show by competent and sufficient evidence that such parent or parents are without other present means of support than their own manual labor or the contributions of others not legally bound for their support: *Provided*, That all pensions allowed to dependent parents under this act shall commence from the date of the filing of the application hereunder, and shall continue no longer than the existence of the dependence. *Sec. 1, act of June 27, 1890 (26 Stat. L., 182).*

Commencement and continuance of pensions.

#### PENSIONS UNDER SPECIAL ACTS.

Certain pensions equalized.  
June 6, 1874, v. 18, p. 61.

**1630.** That all persons entitled to pensions under special acts fixing the rate of such pensions, and now receiving or entitled to receive a less pension than that allowed by the general pension-laws under like circumstances, are, in lieu of their present rate of pension, hereby declared to be entitled to the benefits and subject to the limitations of the general pension laws entitled "An act to revise, consolidate, and amend the laws relating to pensions," approved March third, eighteen hundred and seventy-three; and that this act go into effect from and after its passage: *Provided*, That this act shall not be construed to reduce any pension granted by special act. *Act of June 6, 1874 (18 Stat. L., 61).*

Pensions granted by special act not reduced.

Pensions under special acts of Congress.  
Sec. 4720, R. S.

**1631.** When the rate, commencement, and duration of a pension allowed by special act are fixed by such act, they shall not be subject to be varied by the provisions and limitations of the general pension-laws, but when not thus fixed the rate and continuance of the pension shall be subject to variation in accordance with the general laws, and its commencement shall date from the passage of the special act, and the Commissioner of Pensions shall, upon satisfactory evidence that fraud was perpetrated in obtaining such special act, suspend payment thereupon until the propriety of repealing the same can be considered by Congress. *See act of June 6, 1874 (18 Stat. L., 61).*

Pensioners under special law not to receive any other relief unless, etc.  
Sec. 5, July 25, 1882, v. 22, p. 176.

**1632.** That no person who is now receiving or shall hereafter receive a pension under a special act shall be entitled to receive in addition thereto a pension under the general law, unless the special act expressly states that the pension granted thereby is in addition to the pension which said person is entitled to receive under the general law. *Sec. 5, act of July 25, 1882 (22 Stat. L., 176).*

## MEXICAN WAR PENSIONS.

**1633.** Any officer, non-commissioned officer, musician or private, whether of the Regular Army or volunteers disabled by reason of injury received or disease contracted while in the line of duty in actual service in the war with Mexico, or in going to or returning from the same, who received an honorable discharge, shall be entitled to a pension proportionate to his disability, not exceeding for total disability half the pay of his rank at the date at which he received the wound or contracted the disease which resulted in such disability. But no pension shall exceed half the pay of a lieutenant-colonel.

Pensions to soldiers of Mexican war.

May 13, 1846, c. 16, s. 7, v. 9, p. 10.  
Sec. 4730, R. S.

**1634.** If any officer or other person referred to in the preceding section has died or shall hereafter die by reason of any injury received or disease contracted under the circumstances therein set forth, his widow shall be entitled to receive the same pension as the husband would have been entitled to had he been totally disabled; and in case of her death or remarriage, the child or children of such officer or other person referred to in the preceding section, while under the age of sixteen years, shall be entitled to receive the pension. But the rate of pension prescribed by this and the preceding section shall be varied after the twenty-fifth day of July, eighteen hundred and sixty-six in accordance with the provisions of section four thousand seven hundred and twelve of this Title.<sup>1</sup>

Widows and children of Mexican war pensioners.

Mar. 3, 1873, c. 234, s. 18, v. 17, p. 572.

Sec. 4731, R. S.

## PENSIONS FOR INDIAN WARS.

**1635.** That the Secretary of the Interior be, and he is hereby, authorized and directed to place on the pension roll the names of the surviving officers and enlisted men, including marines, militia, and volunteers of the military and naval service of the United States, who served for thirty days in the Black Hawk war, the Creek war, the Cherokee disturbances, or the Florida war with the Seminole Indians, embracing a period from eighteen hundred and thirty-two to eighteen hundred and forty-two, inclusive, and were honorably discharged, and such other officers, soldiers, and sailors as may have been personally named in any resolution of Congress, for any specific service in said Indian wars, although their term of service may have been

Indian wars prior to 1842.

Pensions for service in.

July 27, 1892, v. 27, p. 281.

<sup>1</sup>For other statutes regulating the issue of pensions for services rendered during the Mexican war, see the acts of January 29, 1887 (24 Stat. L., 371), March 3, 1891 (26 Stat. L., 1418), January 5, 1893 (27 Stat. L., 413), and January 23, 1893 (27 Stat. L., 421), and March 2, 1895 (28 Stat. L., 814). For statutes regulating the granting of pensions for services in the war of 1812, see sections 4736-4740, Revised Statutes.

Widows. less than thirty days, and the surviving widows of such  
 Remarriage. officers and enlisted men: *Provided*, That such widows  
 Persons not have not remarried: *Provided further*, That this act shall  
 citizens. not apply to any person not a citizen of the United States.

Rate. SEC. 2. That pensions under this act shall be at the rate  
 of eight dollars per month, and payable from and after the  
 passage of this act, for and during the natural lives of the  
 persons entitled thereto.

Proof. SEC. 3. That before the name of any person shall be placed  
 on the pension roll under this act, proof shall be made,  
 under such rules and regulations as the Secretary of the  
 Interior may prescribe, of the right of the applicant to a  
 Pension for pension; and any person who shall falsely and corruptly  
 false swearing, take any oath required under this act shall be deemed  
 etc. guilty of perjury; and the Secretary of the Interior shall  
 cause to be stricken from the pension roll the name of any  
 person whenever it shall be made to appear by proof satis-  
 factory to him that such name was put upon such roll  
 through false and fraudulent representations, and that such  
 person is not entitled to a pension under this act. The loss  
 Loss of dis- of the certificate of discharge shall not deprive any person  
 charge certificate of the benefits of this act, but other evidence of service  
 not a bar. performed and of an honorable discharge may be deemed  
 sufficient.

Not to apply to SEC. 4. That this act shall not apply to any person who  
 certain pension- is receiving a pension at the rate of eight dollars per month  
 ers. or more, nor to any person receiving a pension of less than  
 eight dollars per month, except for the difference between  
 the pension now received (if less than eight dollars per  
 month) and eight dollars per month.

Pension laws SEC. 5. That the pension laws now in force, which are  
 applicable. not inconsistent or in conflict with this act, are hereby made  
 a part of this act, so far as they may be applicable thereto.<sup>1</sup>

Loyalty. SEC. 6. That section forty-seven hundred and sixteen of  
 Sec. 4716, R. S. the Revised Statutes is hereby repealed, so far as the same  
 relates to this act or to pensioners under this act.<sup>2</sup> *Act of*  
*July 27, 1892 (27 Stat. L., 281).*

<sup>1</sup> For proof of citizenship under this act see the act of February 3, 1893 (27 Stat. L., 429).

<sup>2</sup> *Indian wars prior to March 4, 1861.*—For statutes granting pensions for services in Indian wars prior to March 4, 1861, see the acts of January 2, 1812 (2 Stat. L., 670), April 10, 1812 (2 Stat. L., 705), June 15, 1832 (4 Stat. L., 533), May 23, 1836 (5 Stat. L., 33), March 9, 1878 (20 Stat. L., 28), July 27, 1892 (27 Stat. L., 281), and sections 1656, 1657, 4712, 4725, 4726, 4727, and 4732, Revised Statutes.

*Revolutionary pensions.*—For statutes granting pensions for services in the war of the Revolution, see the acts of April 10, 1806 (2 Stat. L., 376), April 25, 1812 (2 Stat. L., 719), March 18, 1818 (3 Stat. L., 410), May 15, 1820 (3 Stat. L., 597), February 4, 1822 (3 Stat. L., 650), March 1, 1823 (3 Stat. L., 787), May 15, 1828 (4 Stat. L., 269), May 31, 1830 (4 Stat. L., 426), June 7, 1832 (4 Stat. L., 529), July 14, 1832 (4 Stat. L., 529), February 19, 1833 (4 Stat. L., 612), July 4, 1836 (5 Stat. L., 128), March 3, 1837 (5 Stat. L., 187), February 2, 1848 (9 Stat. L., 210), July 29, 1848 (9 Stat. L., 266), February 3, 1853

**1636.** The widows and children under sixteen years of age of the officers, non-commissioned officers, musicians and privates of the regulars, militia, and volunteers of the war of one thousand eight hundred and twelve and the various Indian wars since one thousand seven hundred and ninety who remained at the date of their death in the military service of the United States, or who received an honorable discharge and have died or shall hereafter die of injury received or disease contracted in the service and in the line of duty shall be entitled to receive half the monthly pay to which the deceased was entitled at the time he received the injury or contracted the disease which resulted in his death. But no half-pay pension shall exceed the half-pay of a lieutenant-colonel and such half-pay pension shall be varied after the twenty-fifth day of July one thousand eight hundred and sixty-six in accordance with the provisions of section four thousand seven hundred and twelve of this Title.

Widows and children of pensioners of war of 1812, and Indian wars.  
Feb. 14, 1871, c. 50, v. 16, p. 411.  
Sec. 4732, R. S.

#### THE DEPENDENT PENSION LAW.

**1637.** That all persons who served ninety days or more in the military or naval service of the United States during the late war of the rebellion and who have been honorably discharged therefrom, and who are now or who may hereafter be suffering from a mental or physical disability of a permanent character, not the result of their own vicious habits, which incapacitates them from the performance of manual labor in such a degree as to render them unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of invalid pensioners of the United States, and be entitled to receive a pension not exceeding twelve dollars per month, and not less than six dollars per month, proportioned to the degree of inability to earn a support: and such pension shall commence from the date of the filing of the application in the Pension Office, after the passage of this act upon proof that the disability then existed, and shall continue during the existence of the same: *Provided*, That persons who are now receiving pensions under existing laws, or whose claims are pending in the Pension Office, may, by application to the Commissioner of Pensions, in such form as he may prescribe, showing themselves entitled thereto,

Invalid pensions to disabled soldiers and sailors who served ninety days in war of rebellion.  
Sec. 2, June 27, 1890, v. 26, p. 182.

Due proof, etc.

Maximum and minimum pension.  
Proportionate inability.  
Commencement and continuance.

(10 Stat. L., 154), February 28, 1855 (10 Stat. L., 616), March 9, 1878 (20 Stat. L., 29), March 19, 1886 (24 Stat. L., 5), and sections 4716 and 4743, Revised Statutes.

*War of 1812.*—For statutes granting pensions for services in the war of 1812, see the acts of January 11, 1812 (2 Stat. L., 673), February 6, 1812 (2 Stat. L., 677), August 2, 1813 (3 Stat. L., 74), April 16, 1816 (3 Stat. L., 286), April 4, 1842 (5 Stat. L., 473), March 9, 1878 (20 Stat. L., 27), March 19, 1886 (24 Stat. L., 5), and sections 4712, 4713, 4732, 4737, 4738, 4739, and 4740, Revised Statutes.

receive the benefits of this act; and nothing herein contained shall be so construed as to prevent any pensioner thereunder from prosecuting his claim and receiving his pension under any other general or special act: *Provided, however,* That no person shall receive more than one pension for the same period: *And provided further,* That rank in the service shall not be considered in applications filed under this act. *Sec. 2, act of June 27, 1890 (26 Stat. L., 182).*

**1638.** That if any officer or enlisted man who served ninety days or more in the Army or Navy of the United States during the late war of the rebellion, and who was honorably discharged has died, or shall hereafter die, leaving a widow without other means of support than her daily labor, or minor children under the age of sixteen years, such widow shall, upon due proof of her husband's death, without proving his death to be the result of his army service, be placed on the pension-roll from the date of the application therefor under this act, at the rate of eight dollars per month during her widowhood, and shall also be paid two dollars per month for each child of such officer or enlisted man under sixteen years of age, and in case of the death or remarriage of the widow, leaving a child or children of such officer or enlisted man under the age of sixteen years, such pension shall be paid such child or children until the age of sixteen: *Provided,* That in case a minor child is insane, idiotic, or otherwise permanently helpless, the pension shall continue during the life of said child, or during the period of such disability, and this proviso shall apply to all pensions heretofore granted or hereafter to be granted under this or any former statute, and such pensions shall commence from the date of application therefor after the passage of this act: *And provided further,* That said widow shall have married said soldier prior to the passage of this act. *Sec. 3, act of June 27, 1890 (26 Stat. L., 182).*

**1639.** That no agent, attorney, or other person engaged in preparing, presenting, or prosecuting any claim under the provisions of this act shall, directly or indirectly, contract for, demand, receive, or retain for such services in preparing, presenting, or prosecuting such claim a sum greater than ten dollars, which sum shall be payable only upon the order of the Commissioner of Pensions, by the pension agent making payment of the pension allowed, and any person who shall violate any of the provisions of this section, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of a pension or

Pensioners entitled under this or other acts not barred from further benefits.

Only one pension at a time.

Service rank not considered.

Dependent widows and minor children.

Sec. 3, *ibid.*

Widow.

Minor children.

Proof of husband's death.

Rate during widowhood.

Rate for each minor child.

Death or remarriage of widow.

Continuing pension to minor child during permanent disability.

Application to all pensions.

Commencement.

Limit as to time of marriage.

Fees of attorney for prosecuting claims.

Sec. 4, *ibid.*

Maximum fee. How payable.

Violation, or wrongful withholding a misdemeanor.

claim allowed or due such pensioner or claimant under this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offence, be fined not exceeding five hundred dollars, or be imprisoned at hard labor not exceeding two years, or both, in the discretion of the court.<sup>1</sup> *Sec. 4, act of June 27, 1890 (26 Stat. L., 183).*

Penalty.

1640. That whenever a claim for pension under the Act of June twenty-seventh, eighteen hundred and ninety, has been, or shall hereafter be, rejected, suspended, or dismissed, and a new application shall have been, or shall hereafter be, filed, and a pension has been, or shall hereafter be, allowed in such claim, such pension shall date from the time of filing the first application, provided the evidence in the case shall show a pensionable disability to have existed, or to exist, at the time of filing such first application, anything in any law or ruling of the Department to the contrary notwithstanding. *Act of March 6, 1896 (29 Stat. L., 45).*

Pensions to date of original application.  
Mar. 6, 1896, v. 29, p. 45.

#### PENSIONS TO ARMY NURSES.

1641. That all women employed by the Surgeon General of the Army as nurses, under contract or otherwise, during the late war of the rebellion, or who were employed as nurses during such period by authority which is recognized by the War Department, and who rendered actual service as nurses in attendance upon the sick or wounded in any regimental, post, camp, or general hospital of the armies of the United States for a period of six months or more, and who were honorably relieved from such service, and who are now or may hereafter be unable to earn a support, shall, upon making due proof of the fact according to such rules and regulations as the Secretary of the Interior may provide, be placed upon the list of pensioners of the United States and be entitled to receive a pension of twelve dollars per month, and such pension shall commence from the date of filing of the application in the Pension Office after the passage of this act: *Provided*, That no person shall receive more than one pension for the same period. *Act of August 5, 1892 (27 Stat. L., 348).*

Army nurses to receive pensions.  
Aug. 5, 1892, v. 27, p. 348.

Rate.

To receive only one pension.

1642. That no fee, compensation, or allowance shall be paid to, received, or accepted by any agent, attorney, or other person instrumental in the prosecution of any claim for pension under this act; and any person who may make

No fee to agent, etc.  
Sec. 2, Aug. 5, 1892, v. 27, p. 349.

Penalty for claiming.

<sup>1</sup>The provisions of this statute were extended to certain individuals who served in the Missouri militia by joint resolution No. 13 of February 15, 1895 (28 Stat. L., 970).

any claim upon any applicant for any fee, compensation, or allowance shall be guilty of a misdemeanor, and upon conviction shall be fined not exceeding five hundred dollars, or imprisoned at hard labor not exceeding one year, or both, in the discretion of the court; and it shall be the duty of the Interior and War Departments to render all proper aid to applicants under this act. *Sec. 2, act of August 5, 1892 (27 Stat. L., 349).*

#### COMMENCEMENT OF PENSIONS—ARREARS OF PENSIONS.<sup>1</sup>

Commence-  
ment.

*Sec. 1, Jan. 25,  
1879, v. 20, p. 205.*

Rate.

**1643.** That all pensions which have been granted under the general laws regulating pensions, or may hereafter be granted, in consequence of death from a cause which originated in the United States service during the continuance of the late war of the rebellion, or in consequence of wounds, injuries, or disease received or contracted in said service during said war of the rebellion, shall commence from the date of the death or discharge from said service of the person on whose account the claim has been or shall hereafter be granted, or from the termination of the right of the party having prior title to such pension: *Provided*, The rate of pension for the intervening time for which arrears of pension are hereby granted shall be the same per month for which the pension was originally granted.<sup>2</sup> *Sec. 1, act of January 25, 1879 (20 Stat. L., 265).*

The same.

*Mar. 3, 1879, v.  
20, p. 470.*

**1644.** That section one of the act of January twenty-fifth, eighteen hundred and seventy-nine, granting arrears of pensions shall be construed to extend to and include pensions on account of soldiers who were enlisted or drafted for the service in the war of the rebellion, but died or incurred disability from a cause originating after the cessation of hostilities; and before being mustered out: *Provided*, That in no case shall arrears of pensions be allowed and paid from a time prior to the date of actual disability. *Act of March 3, 1879 (20 Stat. L., 470).*

Rate of arrears.

*Mar. 3, 1879, v.  
20, p. 470.*

**1645.** That the rate at which the arrears of invalid pensions shall be allowed and computed in the cases which have been or shall hereafter be allowed shall be graded according to the degree of the pensioners disability from time to time and the provisions of the pension laws in force over the period for which the arrears shall be computed. *Act of March 3, 1879 (20 Stat. L., 470).*

<sup>1</sup>Section 2 of the above statute authorizes the Secretary of the Interior to "adopt such rules and regulations for the payment of the arrears of pensions hereby granted as will be necessary to cause to be paid to such pensioners, or if the pensioners shall have died, to the person or persons entitled to the same, all such arrears of pension as the pensioner may be, or would have been, entitled to under this act."

<sup>2</sup>For statutory provisions respecting unclaimed pensions of decedents, see paragraphs 1714 and 1715, post.

1646. All pensions which have been, or which may hereafter be, granted in consequence of death occurring from a cause which originated in the service since the fourth day of March, eighteen hundred and sixty-one, or in consequence of wounds or injuries received or disease contracted since that date shall commence from the death or discharge of the person on whose account the claim has been or is hereafter granted if the disability occurred prior to discharge, and if such disability occurred after the discharge then from the date of actual disability or from the termination of the right of party having prior title to such pension: *Provided*, The application for such pension has been or is hereafter filed with the Commissioner of Pensions prior to the first day of July eighteen hundred and eighty, otherwise the pension shall commence from the date of filing the application; but the limitation herein prescribed shall not apply to claims by or in behalf of insane persons and children under sixteen years of age. *Sec. 2, ibid.*

Date of commencement.  
Sec. 2, *ibid.*

Limitation. \

1647. That hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws: *And provided further*, That any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account of the increase of disability for which pension was allowed, or who has rendered services in procuring the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned, not exceeding two years or both, in the discretion of the court: *Provided, however*, That the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case now pending where there is an existing lawful contract express or implied. *Act of March 3, 1895 (26 Stat. L., 1082).*

Fee for increase, etc., claims. Penalty for taking illegal fee. Pending contracts.  
Mar. 3, 1891, v. 26, p. 1082.

1648. It shall be the duty of the Commissioner of Pensions, upon any application by letter or otherwise by or on

Arrears of pension.  
Sec. 4711, R. S.



behalf of any pensioner entitled to arrears of pension under section forty-seven hundred and nine,<sup>1</sup> or if any such pensioner has died, upon a similar application by or on behalf of any person entitled to receive the accrued pension due such pensioner at his death, to pay or cause to be paid to such pensioner, or other person, all such arrears of pension as the pensioner may be entitled to, or, if dead, would have been entitled to under the provisions of that section had he survived; and no claim-agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension.

No fees to claim agents.

Sec. 4, Jan. 25, 1879, v. 20, p. 265.

**1649.** No claim agent or other person shall be entitled to receive any compensation for services in making application for arrears of pension. *Sec. 4, act of January 25, 1879 (20 Stat. L., 265).*

Provisions of pension laws extended, etc.

Sec. 4712, R. S.

**1650.** The provisions of this Title in respect to the rates of pension to persons whose right accrued since the fourth day of March, eighteen hundred and sixty-one, are extended to pensioners whose right to pension accrued under general acts passed since the war of the Revolution and prior to the fourth day of March, eighteen hundred and sixty-one, to take effect from and after the twenty-fifth day of July, eighteen hundred and sixty-six; and the widows of revolutionary soldiers and sailors receiving a less sum shall be paid at the rate of eight dollars per month from and after the twenty-seventh day of July, eighteen hundred and sixty-eight.<sup>2</sup>

Certain reduced pensions restored.

June 9, 1880, v. 21, p. 170.

**1651.** That section three of an act entitled "An act increasing the pensions of widows and orphans, and for other purposes", approved July twenty-fifth, eighteen hundred and sixty-six, and section thirteen of an act entitled "An act relating to pensions", approved July twenty-seventh, eighteen hundred and sixty-eight, and section forty-seven hundred and twelve of the Revised Statutes, shall not operate to reduce the rate of any pension which had actually been allowed to the commissioned, non-commissioned, or petty officers of the Navy or their widows or minor children, prior to the twenty-fifth day of July, eighteen hundred and sixty-six; and the Secretary of the Interior is hereby directed to restore all such pensions as have already been so reduced to the rate originally granted and allowed, to take effect from the date of such reduction. *Act of June 9, 1880 (21 Stat. L., 170).*

Commencement of pensions for prior wars.

Sec. 4713, R. S.

**1652.** In all cases in which the cause of disability or death originated in the service prior to the fourth day of

<sup>1</sup> The section above referred to is section 4709, Revised Statutes, which was repealed by the act of March 3, 1879 (20 Stat. L., 479).

<sup>2</sup> Amended by act of June 9, 1880 (21 Stat. L., 170), which provides that this section shall not operate to reduce pensions already granted. See paragraph 1651, *post*.

March, eighteen hundred and sixty-one, and an application for pension shall not have been filed within three years from the discharge or death of the person on whose account the claim is made, or within three years of the termination of a pension previously granted on account of the service and death of the same person, the pension shall commence from the date of filing by the party prosecuting the claim the last paper requisite to establish the same. But no claim allowed prior to the sixth day of June, eighteen hundred and sixty-six, shall be affected by anything herein contained.

#### REMOVAL OF LIMITATION.

**1653.** That section forty-seven hundred and seventeen of the Revised Statutes of the United States, which provides that "no claim for pension not prosecuted to a successful issue within five years from the date of filing the same shall be admitted without record evidence from the War or Navy Department of the injury or the disease which resulted in the disability or death of the person on whose account the claim is made: *Provided*, That in any case in which the limitation prescribed by this section bars the further prosecution of the claim, the claimant may present, through the Pension Office, to the Adjutant-General of the Army or the Surgeon-General of the Navy, evidence that the disease or injury which resulted in the disability or death of the person on whose account the claim is made originated in the service and in the line of duty, and if such evidence is deemed satisfactory by the officer to whom it may be submitted, he shall cause a record of the fact so proved to be made, and a copy of the same to be transmitted to the Commissioner of Pensions, and the bar to the prosecution of the claim shall thereby be removed," be, and the same is hereby repealed.<sup>1</sup> *Sec. 3, act of January 25, 1879 (20 Stat. L., 265).*

Limitation to prosecution of pension claims removed.  
S. 3, Jan. 25, 1879, v. 20, p. 265.

#### MEMBERS OF CONGRESS AND OFFICERS AND CLERKS OF THE UNITED STATES NOT TO BE INTERESTED IN THE PROSECUTION OF CLAIMS.

**1654.** No Senator, Representative, or Delegate, after his election and during his continuance in office, and no head of a Department, or other officer or clerk in the employ of the Government, shall receive or agree to receive any compensation whatever, directly or indirectly, for any services

Upon taking compensation in matters to which United States is a party.  
June 11, 1864, c. 119, v. 13, p. 123.  
Sec. 1782, R. S.

<sup>1</sup> Section 4721, Revised Statutes, prescribes a limitation upon the operation of sections 4709 and 4710, and 4717, the former of which were repealed by the act of March 3, 1879 (20 Stat. L., 469), and the latter by the act of January 20, 1879 (20 Stat. L., 65).

rendered, or to be rendered, to any person, either by himself or another, in relation to any proceeding, contract, claim, controversy, charge, accusation, arrest, or other matter or thing in which the United States is a party, or directly or indirectly interested, before any Department, court-martial, Bureau, officer, or any civil, military, or naval commission whatever. Every person offending against this section shall be deemed guilty of a misdemeanor, and shall be imprisoned not more than two years, and fined not more than ten thousand dollars, and shall, moreover, by conviction therefor, be rendered forever thereafter incapable of holding any office of honor, trust, or profit under the Government of the United States.

#### DECLARATIONS AND EVIDENCE IN PENSION CASES.

Penalty for  
false affidavit  
and postdating  
vouchers, etc.

Sec. 4746, R. S.

**1655.** Every person who knowingly or willfully in anywise procures the making or presentation of any false or fraudulent affidavit concerning any claim for pension, or payment thereof, or pertaining to any other matter within the jurisdiction of the Commissioner of Pensions, or who knowingly or willfully presents or causes to be presented at any pension-agency any power of attorney or other paper required as a voucher in drawing a pension, which paper bears a date subsequent to that on which it was actually signed or executed, shall be punished by a fine not exceeding five hundred dollars, or by imprisonment for a term not exceeding three years, or by both.

Declarations in  
pension cases.

Sec. 1, July 26,  
1892, v. 27, p. 272.

**1656.** That declarations of pension claimants shall be made before a court of record, or before some officer thereof having custody of its seal, or before some officer who, under the laws of his State, city, or county, has authority to administer oaths for general purposes; and said officers are hereby fully authorized and empowered to administer and certify any oath or affirmation relating to any pension or application therefor: *Provided*, That where such declaration or other papers are executed before an officer authorized as above but not required by the laws of his State to have and use a seal to authenticate his official acts, he shall file in the Pension Bureau a certificate of his official character, showing his official signature and term of office, certified by a clerk of a court of record or other proper officer of the State as to the genuineness thereof; and when said certificate has been filed in the Bureau of Pensions his own certificate will be recognized during his term of office.<sup>1</sup>  
*Sec. 1, act of July 26, 1892 (27 Stat. L., 272).*

<sup>1</sup> See also section 1778, Revised Statutes.

1657. That the Commissioner of Pensions may accept declarations and other papers of claimants residing in foreign countries made before a United States minister or consul or other consular officer, or before some officer of the country duly authorized to administer oaths for general purposes, and whose official character and signature shall be duly authenticated by the certificate of a United States minister or consul or other consular officer; and declarations in claims of Indians may be made before a United States Indian agent. *Sec. 2, act of July 26, 1892 (27 Stat. L., 272).*

Declarations of  
Indians.

1658. That the Commissioner of Pensions, on application being made to him in person, or by letter, by any claimant or applicant for pension, bounty-land, or other allowance required by law to be adjusted or paid by the Pension-Office, shall furnish such person, free of all expense, all such printed instructions and forms as may be necessary in establishing and obtaining said claim; and on the issuing of a certificate of pension or of a bounty-land warrant, he shall forthwith notify the claimant or applicant, and also the agent or attorney in the case, if there be one, that such certificate has been issued, or allowance made, and the date and amount thereof.

Commissioner  
to furnish printed  
instructions  
free of charge.  
*Ibid.*, s. 22, p. 573.  
Sec. 4748, R. S.

1659. That the Commissioner of Pensions be, and he is hereby, authorized and directed to accept as sufficient proof of the citizenship of an applicant for pension under said act of July twenty-seventh, eighteen hundred and ninety-two, the fact that such applicant at the date of the application was an actual and bona fide resident of the United States. *Act of February 3, 1893 (27 Stat. L., 429).*

Residence to be  
proof of citizen-  
ship in certain  
cases.  
Feb. 3, 1893, v. 27, p. 429.

1660. That in considering claims filed under the pension laws, the death of an enlisted man or officer shall be considered as sufficiently proved if satisfactory evidence is produced establishing the fact of the continued and unexplained absence of such enlisted man or officer from his home and family for a period of seven years, during which period no intelligence of his existence shall have been received. And any pension granted under this Act shall cease upon proof that such officer or enlisted man is still living. *Act of March 13, 1896 (29 Stat. L., 57).*

Proof of death.  
Mar. 13, 1896, v. 29, p. 57.

1661. That all applicants for pensions shall be presumed to have had no disability at the time of enlistment; but such presumption may be rebutted. *Act of March 3, 1885 (23 Stat. L., 361).*

Presumption  
as to disability at  
enlistment.  
Mar. 3, 1885, v. 23, p. 361.

Curing defective declarations, etc.

Sec. 3, July 26, 1892, v. 27, p. 272.

**1662.** That any and all declarations or affidavits now on file in the Pension Bureau which are considered informal by reason of not having been executed in conformity to the laws heretofore in force covering such, and in which it is shown or may be hereafter shown by proper evidence that the same were executed by and before an officer who was duly authorized to administer oaths for general purposes at said date of execution, shall be accepted as formal as from date of filing such declarations or affidavits. *Sec. 3, act of July 26, 1892 (27 Stat. L., 272).*

Indian claims.  
Sec. 4721, R. S.

**1663.** The term of limitation prescribed by sections forty-seven hundred and nine and forty-seven hundred and seventeen shall, in pending claims of Indians, be extended to two years from and after the third day of March, eighteen hundred and seventy-three; all proof which has heretofore been taken before an Indian agent, or before an officer of any tribe, competent according to the rules of said tribe to administer oaths, shall be held and regarded by the Pension-Office, in the examining and determining of claims of Indians now on file, as of the same validity as if taken before an officer recognized by the law at the time as competent to administer oaths; all proof wanting in said claims hereafter, as well as in those filed after the third day of March, eighteen hundred and seventy-three, shall be taken before the agent of the tribe to which the claimants respectively belong; in regard to dates, all applications of Indians now on file shall be treated as though they were made before a competent officer at their respective dates, and if found to be in all other respects conclusive, they shall be allowed; and Indians shall be exempted from the obligation to take the oath to support the Constitution of the United States.<sup>1</sup>

#### ACCRUED AND UNCLAIMED PENSIONS.

Accrued pensions.

Sec. 25, Mar. 3, 1873, v. 17, p. 574.  
Sec. 4718, R. S.

**1664.** If any pensioner has died or shall hereafter die; or if any person entitled to a pension, having an application therefor pending, has died or shall hereafter die, his widow, or if there is no widow, the child or children of such person under the age of sixteen years, shall be entitled to receive the accrued pension to the date of the death of such person. Such accrued pension shall not be considered as a part of the assets of the estate of deceased, nor liable to be applied to the payment of the debts of said estate in any case whatever, but shall inure to the sole and exclusive benefit of the widow or children; and if no widow or child

<sup>1</sup> Section 4717, Revised Statutes, was repealed by section 3 of the act of January 25, 1879 (20 Stat. L., 265); see paragraph 1653, *ante*.

survive, no payment whatsoever of the accrued pension shall be made or allowed, except so much as may be necessary to re-imburse the person who bore the expenses of the last sickness and burial of the decedent, in cases where he did not leave sufficient assets to meet such expenses.<sup>1</sup>

**1665.** That from and after the twenty-eighth day of September, eighteen hundred and ninety-two, the accrued pension to the date of the death of any pensioner, or of any person entitled to a pension having an application therefor pending, and whether a certificate therefor shall issue prior or subsequent to the death of such person, shall, in the case of a person pensioned, or applying for pension, on account of his disabilities or service, be paid, first, to his widow; second, if there is no widow, to his child or children under the age of sixteen years at his death; third, in case of a widow, to her minor children under the age of sixteen years at her death. Such accrued pension shall not be considered a part of the assets of the estate of such deceased person, nor be liable for the payment of the debts of said estate in any case whatsoever, but shall inure to the sole and exclusive benefit of the widow or children. And if no widow or child survive such pensioner, and in the case of his last surviving child who was such minor at his death, and in case of a dependent mother, father, sister, or brother, no payment whatsoever of their accrued pension shall be made or allowed except so much as may be necessary to reimburse the person who bore the expense of their last sickness and burial, if they did not leave sufficient assets to meet such expense. And the mailing of a pension check, drawn by a pension agent in payment of a pension due, to the address of a pensioner, shall constitute payment in the event of the death of a pensioner subsequent to the execution of the voucher therefor. And all prior laws relating to the payment of accrued pension are hereby repealed.

*Act of March 2, 1895 (28 Stat. L., 964).*

Payment of accrued pension to death of pensioner.

Distribution.  
Mar. 2, 1895, v. 28, p. 964.

Not assets of estate.

Payment of expenses of last sickness, etc.

Mailing check to be payment.

**1666.** The failure of any pensioner to claim his or her pension for three years after the same shall have become due shall be deemed presumptive evidence that such pension has legally terminated by reason of the pensioner's death, remarriage, recovery from the disability, or otherwise, and the pensioner's name shall be stricken from the list of pensioners, subject to the right of restoration to the same on

Unclaimed pensions.  
Sec. 26, June 18, 1874, v. 17, p. 574.  
Sec. 4719, R. S.

<sup>1</sup>The act of June 3, 1884 (23 Stat. L., 35), contains the requirement "that the heirs or legal representatives of any officer whose muster into the service has been or shall be amended thereby shall be entitled to receive the arrears of pay due such officer, and the pension, if any, authorized by law, for the grade into which such officer is mustered under its provisions." See also the act of March 1, 1889 (25 Stat. L., 782).

a new application by the pensioner, or, if the pensioner is dead, by the widow or minor children entitled to receive the accrued pension, accompanied by evidence satisfactorily accounting for the failure to claim such pension, and by medical evidence in cases of invalids who were not exempt from biennial examinations as to the continuance of the disability.

#### ATTORNEY'S FEES.

Fees of attorney for prosecuting claims.

Sec. 3, July 4,

1884, v. 23, p. 99.

Sec. 4785, R. S.

*Proviso.*

Fees not paid in certain cases to be deducted from pension.

Agreement for amount of fee to be filed.

S. 4, July 4,

1884, v. 23, p. 99.

Sec. 4786, R. S.

Fee in case of failure to file agreement.

Articles of agreement, etc., recognized in certain claims only.

**1667.** No agent or attorney or other person shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him, not exceeding twenty-five dollars; nor shall such agent, attorney or other person demand or receive such compensation, in whole or in part, until such pension or bounty-land claim shall be allowed: *Provided*, That in all claims allowed since June twentieth eighteen hundred and seventy-eight where it shall appear to the satisfaction of the Commissioner of Pensions that the fee of ten dollars, or any part thereof, has not been paid, he shall cause the same to be deducted from the pension, and the pension agent to pay the same to the recognized attorney.

**1668.** The agent or attorney of record in the prosecution of the case may cause to be filed with the Commissioner of Pensions, duplicate articles of agreement, without additional cost to the claimant, setting forth the fee agreed upon by the parties, which agreement shall be executed in the presence of and certified by some officer competent to administer oaths. In all cases where application is made for pension or bounty land, and no agreement is filed with the Commissioner as herein provided, the fee shall be ten dollars and no more. And such articles of agreement as may hereafter be filed with the Commissioner of Pensions

are not authorized, nor will they be recognized except in claims for original pensions, claims for increase of pension on account of a new disability, in claims for restoration where a pensioner's name has been or may hereafter be dropped from the pension rolls on testimony taken by a special examiner, showing that the disability or cause of death, on account of which the pension was allowed, did not originate in the line of duty, and in cases of dependent relatives whose names have been or may hereafter be, dropped from the rolls on like testimony, upon the ground of non dependence, and in such other cases of difficulty and trouble as the Commissioner of Pensions may see fit to

recognize them: *Provided*, That no greater fee than ten dollars shall be demanded, received, or allowed in any claim for pension or bounty land granted by special act of Congress, nor in any claim for increase of pension on account of the increase of the disability for which the pension had been allowed: *And provided further*, That no fee shall be demanded, received, or allowed in any claim for arrears of pension or arrears of increase of pension allowed by any act of Congress passed subsequent to the date of the allowance of the original claims in which such arrears of pension, or of increase of pension, may be allowed.

*Proviso.*

Fee for bounty land, etc.

No fee allowed for arrears of pension, etc.

The articles of agreement herein provided for shall be in substance as follows, to wit:

## ARTICLES OF AGREEMENT.

Whereas I, ———, late a ——— in company ———, of the ——— regiment of ——— volunteers, war of eighteen hundred and sixty-one (or, if the service be different, here state the same), having made application for pension under the laws of the United States:

Form of articles of agreement.

Now, this agreement witnesseth, that for and in consideration of services done and to be done in the premises, I hereby agree to allow my attorney, ——— of ———, the fee of ——— dollars, which shall include all amounts to be paid for any service in furtherance of said claim; and said fee shall not be demanded by or payable to my said attorney (or attorneys), in whole or in part, except in case of the granting of my pension by the Commissioner of Pensions; and then the same shall be paid to him (or them) in accordance with the provisions of sections forty-seven hundred and sixty-eight and forty-seven hundred and sixty-nine of the Revised Statutes.

(Claimant's signature.)

(Two witnesses' signatures.)

STATE OF ——— } ss.  
County of ——— }

Be it known that on this, the ——— day of ———, anno Domini eighteen hundred and eighty ———, personally appeared the above-named ———, who, after having had read over to ———, in the hearing and presence of the two attesting witnesses, the contents of the foregoing articles of agreement, voluntarily signed and acknowledged the same to be ——— free act and deed.

(Official signature.)



And now, to wit, this —— day of ——, anno Domini eighteen hundred and eighty ——, I (or we) accept the provisions contained in the foregoing articles of agreement, and will, to the best of my (or our) ability, endeavor faithfully to represent the interest of the claimant in the premises.

Witness my (or our) hand, the day and year first above written.

(Signature of Attorney.)

STATE OF —— }  
County of —— } ss.

Personally came —— ——, whom I know to be the person he represents himself to be, and who, having signed above acceptance of agreement, acknowledged the same to be —— free act and deed.

(Official signature.)

Amount paid,  
etc., to be de-  
ducted from fee.

And if in the adjudication of any claim for pension in which such articles of agreement have been, or may hereafter be, filed, it shall appear that the claimant had, prior to the execution thereof, paid to the attorney any sum for his services in such claim, and the amount so paid is not stipulated therein, then every such claim shall be adjudicated in the same manner as though no articles of agreement had been filed, deducting from the fee of ten dollars allowed by law such sum as claimant shall show that he has paid to his said attorney.

Penalty for  
violation of act  
relating to fees  
or compensation.

Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand or receive or retain any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant the whole or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall for every such offense be fined not exceeding five hundred dollars, or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court. *Sec. 4, act of July 5, 1884 (23 Stat. L., 99).*

Secretary of  
Interior to pre-  
scribe rules for  
government of  
agents, etc., in  
prosecution of  
claims.

Sec. 5, *ibid.*

1669. That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his department, and may require of such persons, agents, and attorneys, before being recognized as representatives

of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his department any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement. *Sec. 5, ibid.*

1670. The Commissioner shall have power, subject to review by the Secretary, to reject or refuse to recognize any contract for fees, herein provided for, whenever it shall be made to appear that any undue advantage has been taken of the claimant in respect to such contract. *Sec. 6, ibid.*

Commissioner of Pensions may reject contracts for fees, etc.  
*Sec. 6, ibid.*

1671. That the act entitled "An act relating to claim agents and attorneys in pension cases," approved June twentieth, eighteen hundred and seventy-eight, is hereby repealed: *Provided however*, That the rights of the parties shall not be abridged or affected as to contracts in pending cases, as provided for in said act; but such contracts shall be deemed to be and remain in full force and virtue, and shall be recognized as contemplated by said act. *Act of July 4, 1884 (23 Stat. L., 99).*

Attorneys' fees in pension cases; act relating to, repealed.

July 4, 1884, v. 23, p. 99.

1672. That sections forty-seven hundred and sixty-eight, forty-seven hundred and sixty-nine, and forty-seven hundred and eighty-six of the Revised Statutes are hereby made applicable also to all cases hereafter filed with the Commissioner of Pensions, and to all cases so filed since June twentieth, eighteen hundred and seventy-eight, and which have not been heretofore allowed, except as herein after provided. *Sec. 2, act of July 4, 1884 (23 Stat. L., 99).*

Sections 4768, 4769, and 4786, Revised Statutes, made applicable in certain cases.  
*Sec. 2, July 4, 1884, v. 23, p. 99.*

1673. That hereafter no agent or attorney shall demand, receive, or be allowed any compensation under existing law exceeding two dollars in any claim for increase of pension on account of the increase of the disability for which the pension has been allowed, or for services rendered in securing the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws: *And provided further*, That any agent, attorney, or other person instrumental in prosecuting any claim for increase of pension on account

Fee for increase, etc., claims.  
*Mar. 3, 1891, v. 26, p. 1082.*

Penalty for taking illegal fee.

of the increase of disability for which pension was allowed, or who has rendered services in procuring the passage of any special act of Congress granting a pension or an increase of pension in any case that has been presented at the Pension Office or is allowable under the general pension laws, who shall directly or indirectly contract for, demand, receive, or retain any compensation for such services, except as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, for each and every such offense, be fined not exceeding five hundred dollars or imprisoned, not exceeding two years or both, in the discretion of the court: *Provided, however,* That the foregoing provisions in relation to fees of agents or attorneys shall not apply to any case now pending where there is an existing lawful contract express or implied. *Act of March 3, 1891 (26 Stat. L., 1082).*

Pending contracts.

#### PAYMENT OF PENSIONS.

Pension agents to send quarterly voucher to each pensioner, etc.  
July 8, 1870, c. 225, s. 1, v. 16, p. 193.

Sec. 4764, R. S.

**1674.** Within fifteen days immediately preceding the fourth day of March, June, September, and December in each year, the several agents for the payment of pensions shall prepare a quarterly voucher for every person whose pension is payable at his agency, and transmit the same by mail, directed to the address of the pensioner named in such voucher, who, on or after the fourth day of March, June, September, and December next succeeding the date of such voucher, may execute and return the same to the agency at which it was prepared, and at which the pension of such person is due and payable.

Fourth-class postmasters may administer oaths, etc.  
Aug. 23, 1894, v. 28, p. 499.

Aug. 23, 1894, v. 28, p. 499.

**1675.** That hereafter, in addition to the officers now authorized to administer oaths in such cases, fourth-class postmasters of the United States are hereby required, empowered, and authorized to administer any and all oaths required to be made by pensioners and their witnesses in the execution of their vouchers with like effect and force as officers having a seal; and such postmaster shall affix the stamp of his office to his signature to such vouchers, and he is authorized to charge and receive for each voucher not exceeding twenty-five cents, to be paid by the pensioner. *Act of August 23, 1894 (28 Stat. L., 499).*

Fees.

Oaths to be administered by officers free.  
June 7, 1888, v. 25, p. 174; Mar. 3, 1889, v. 25, p. 782.

June 7, 1888, v. 25, p. 174; Mar. 3, 1889, v. 25, p. 782.

**1676.** That hereafter all United States officers now authorized to administer oaths are hereby required and directed to administer any and all oaths required to be made by pensioners and their witnesses, in the execution of their vouchers for their pensions free of charge. *Act of*

June 7, 1888 (25 Stat. L., 174), and March 3, 1889 (25 Stat. L., 782).

1677. Upon the receipt of such voucher, properly executed, and the identity of the pensioner being established and proved in the manner prescribed by the Secretary of the Interior, the agent for the payment of pensions shall immediately draw his check on the proper assistant treasurer or designated depository of the United States for the amount due such pensioner, payable to his order, and transmit the same by mail, directed to the address of the pensioner entitled thereto; but any pensioner may be required, if thought proper by the Commissioner of Pensions, to appear personally and receive his pension.<sup>1</sup>

Check to be drawn to order of each pensioner. *Ibid.*, s. 2, p. 194. Sec. 4765, R. S.

1678. That a check or checks drawn by a pension agent in payment of pension due, and mailed by him to the address of the pensioner, shall constitute payment within the meaning of section forty-seven hundred and sixty-five Revised Statutes, in the event of the death of a pensioner subsequent to the mailing and before the receipt of said check; and the amount which may have accrued on the pension of any pensioner subsequent to the last quarterly payment on account thereof and prior to the death of such pensioner shall in the case of a husband be paid to his widow, or if there be no widow to his surviving minor children or the guardian thereof, and in the case of a widow to her minor children: *Provided further*, That hereafter whenever a pension certificate shall have been issued and the pensioner mentioned therein dies before payment shall have been made, leaving no widow and no surviving minor children, the accrued pension due on said certificate to the date of the death of such pensioner may, in the discretion of the Secretary of the Interior, be paid to the legal representatives of said pensioner. *Act of March 1, 1889* (25 Stat. L., 782).

Mailing check to be payment in certain cases. Mar. 1, 1889, v. 25, p. 782.

Accrued pension on death of pensioner.

Death of pensioner, leaving no widow or minor child.

1679. Hereafter no pension shall be paid to any person other than the pensioner entitled thereto, nor otherwise than according to the provisions of this title; and no warrant, power of attorney, or other paper executed or purporting to be executed by any pensioner to any attorney, claim agent, broker, or other person shall be recognized by any agent for the payment of pensions, nor shall any pension be paid thereon; but the payment to persons laboring under legal disabilities may be made to the guardians of

Pensioners under legal disabilities.

Aug. 8, 1882, v. 22, p. 374. Sec. 4766, R. S.

<sup>1</sup>For payment of pensions to inmates of the Soldiers' Home, of the National Home for Disabled Volunteer Soldiers, and the Government Hospital for the Insane, see the chapters so entitled.

Pensioners in foreign countries.

Invalid pensioners, insane.

Indian pensioners; payments in standard silver.

Payments in cash, when made.

Expenses of agents.

Agencies to be arranged in three groups.

Sec. 2, Mar. 3, 1891, v. 26, p. 1082. Quarterly payments to groups.

such persons in the manner herein prescribed, and pensions payable to persons in foreign countries may be made according to the provisions of existing laws: *Provided*, That in case of an insane invalid pensioner having no guardian, but having a wife or children dependent upon him (the wife being a woman of good character), the Commissioner of pensions is hereby authorized, in his discretion, to cause the pension to be paid to the wife, upon her properly-executed voucher, or in case there is no wife, to the guardian of the children, upon the properly-executed voucher of such guardian, and in like manner to cause the pension of invalid pensioners who are or may hereafter be imprisoned as punishment for offenses against the laws to be paid while so imprisoned to their wives or the guardians of their children. And pensions to Indian pensioners residing in the Indian Territory may be paid in person by the pension agent, upon a suitable voucher, at some convenient point in said Territory, which, together with the form and manner of identification of the pensioners, may be prescribed by the Secretary of the Interior; such payments to be made in standard silver, at least once in each current year. And payments in person shall be made to the pensioner, in cash, by the pension agent whenever in the discretion of the Commissioner of Pensions such personal payment shall be by him deemed necessary or proper to secure to the pensioner his rights; and the necessary and actual expenses of such pension agent in making such payments shall be paid by the Secretary of the Interior upon properly-executed vouchers, out of the contingent fund appropriated for the use of the Pension Office. \* \* \* *Act of August 8, 1882 (22 Stat. L., 374).*

**1680.** That the Secretary of the Interior is hereby authorized and directed to arrange the various agencies for the payment of pensions in three groups as he may think proper, and may from time to time change any agency from one group to another as he may deem convenient for the transaction of the public business. \* \* \* The Secretary of the Interior is hereby fully authorized to cause payments of pensions to be made for the fractional parts of quarters created by such change, so as to properly adjust all payments as herein provided. Section forty-seven hundred and sixty-four of the Revised Statutes is hereby so amended as to conform to the changes in the time of payments provided herein, and is made applicable thereto. *Sec. 2, act of March 3, 1891 (26 Stat. L., 1082).*

**1681.** The Secretary of the Interior shall cause suitable blanks for the vouchers mentioned in section forty-seven hundred and sixty-four to be printed and distributed to the agents for the payment of pensions, upon which he shall cause a note to be printed informing pensioners of the fact that hereafter no pension will be paid, except upon the vouchers issued as herein directed.

Blanks for vouchers; notice.  
*Ibid.*, s. 5.  
Sec. 4767, R. S.

**1682.** The Commissioner of Pensions shall forward the certificate of pensions, granted in any case, to the agent for paying pensions where such certificate is made payable, and at the same time forward therewith one of the articles of agreement filed in the case and approved by the Commissioner, setting forth the fee agreed upon between the claimant and the attorney or agent, and where no agreement is on file, as hereinbefore provided, he shall direct that a fee of ten dollars only be paid the agent or attorney. [See Sec. 5485.]

Certificate of pension and fee of attorney.  
*Ibid.*, s. 9, p. 195.  
Sec. 4768, R. S.

**1683.** It shall be the duty of the agent paying such pension to deduct from the amount due the pensioner the amount of fee so agreed upon or directed by the Commissioner to be paid where no agreement is filed and approved, and to forward or cause to be forwarded to the agent or attorney of record named in such agreement, or, in case there is no agreement, to the agent prosecuting the case, the amount of the proper fee, deducting therefrom the sum of thirty cents, in payment of his services in forwarding the same.

Pension agent to deduct attorney's fees.  
*Ibid.*, s. 10.  
Sec. 4769, R. S.

#### DUPLICATE CHECKS.

**1684.** Whenever any original check is lost, stolen, or destroyed, disbursing officers and agents of the United States are authorized, after the expiration of six months, and within three years from the date of such check, to issue a duplicate check; and the Treasurer, assistant treasurers, and designated depositaries of the United States are directed to pay such duplicate checks, upon notice and proof of the loss of the original checks, under such regulations in regard to their issue and payment, and upon the execution of such bonds, with sureties, to indemnify the United States, as the Secretary of the Treasury shall prescribe. This section shall not apply to any check exceeding in amount the sum of twenty-five hundred dollars. *Act of February 16, 1885 (23 Stat. L., 306).*

Duplicate checks.  
Feb. 16, 1885, v. 23, p. 306.  
Sec. 3646, R. S.

#### SPECIAL EXAMINATIONS.

**1685.** That the Commissioner of Pensions shall have the same power as heretofore to order special examinations whenever, in his judgment, the same may be necessary, and to increase or reduce the pension according to right

Commissioner of Pensions may order special examinations.  
Sec. 3, June 21, 1879, v. 21, p. 30.

and justice; but in no case shall a pension be withdrawn or reduced except upon notice to the pensioner and a hearing upon sworn testimony, except as to the certificate of the examining surgeon.<sup>1</sup> *Sec. 3, act of June 21, 1879 (21 Stat. L., 30).*

Boards of examining surgeons.

Mar. 3, 1873, c. 234, s. 36, v. 17, p. 576.

Sec. 4774, R. S.

**1686.** The Commissioner of Pensions is authorized to organize, at his discretion, boards of examining surgeons, not to exceed three members, and each member of a board thus organized who is actually present and makes, in connection with other members or member, an ordered or periodical examination, shall be entitled to the fee of one dollar, on the receipt of a proper certificate of such examination by the Commissioner of Pensions.<sup>2</sup>

Special examinations.

*Ibid.*, s. 37.

Sec. 4775, R. S.

**1687.** Examining surgeons duly appointed by the Commissioner of Pensions, and such other qualified surgeons as may be employed in the Pension-Office, may be required by him, from time to time, as he deems for the interest of the Government, to make special examinations of pensioners or applicants for pension, and such examinations shall have precedence over previous examinations, whether special or biennial; but when injustice is alleged to have been done by an examination so ordered, the Commissioner of Pensions may, at his discretion, select a board of three duly appointed examining surgeons, who shall meet at a place to be designated by him, and shall review such cases as may be ordered before them on appeal from any special examination, and the decision of such board shall be final on the question so submitted thereto, provided the Commissioner approve the same. The compensation of each of such surgeons shall be three dollars, and shall be paid out of any appropriations made for the payment of pensions, in the same manner as the ordinary fees of appointed surgeons are or may be authorized to be paid.<sup>2</sup>

Medical referee and examining surgeon.

*Ibid.*, s. 38, p. 577.

Sec. 4776, R. S.

**1688.** The Secretary of the Interior is authorized to appoint a duly qualified surgeon as medical referee who, under the control and direction of the Commissioner of Pensions, shall have charge of the examination and revision of the reports of examining surgeons, and such other duties touching medical and surgical questions in the Pension Office, as the interests of the service may demand; and his salary shall be two thousand five hundred dollars per annum. And the Secretary of the Interior is further authorized to appoint such qualified surgeons (not exceeding four) as the exigencies of the service may require, who may perform the duties of examining surgeons when so

<sup>1</sup> Sections 4771, 4772, and 4773, Revised Statutes, were repealed by the act of June 21, 1879 (21 Stat. L., 30).

<sup>2</sup> But see paragraphs 1692 and 1693, *post*.

required, and who shall be borne upon the rolls as clerks of the fourth class; but such appointments shall not increase the clerical force of said Bureau.

**1689.** The Commissioner of Pensions is empowered to appoint, at his discretion, civil surgeons to make the periodical examinations of pensioners which are or may be required by law, and to examine applicants for pension, where he deems an examination by a surgeon appointed by him necessary; and the fee for such examinations, and the requisite certificates thereof in duplicate, including postage on such as are transmitted to pension-agents, shall be two dollars, which shall be paid by the agent for paying pensions in the district within which the pensioner or claimant resides, out of any money appropriated for the payment of pensions, under such regulations as the Commissioner of Pensions may prescribe.

Appointment of civil examining surgeons.  
*Ibid.*, s. 35, p. 576.  
Sec. 4777, R.S.

**1690.** The Commissioner may, when in his judgment the degree of disability cannot be determined truthfully or satisfactorily excepting by expert examination, employ an expert, not a regularly appointed surgeon, to make the examination; and the fee for such examination shall be five dollars: *Provided*, That the fee for an expert examination shall not be paid to any regularly-appointed examining surgeon. *Act of July 25, 1892 (22 Stat. L., 176).*

Expert surgeons to make examinations.  
July 25, 1892, v. 22, p. 176.

*Proviso.*  
Fees.

**1691.** The fee for the examination of claimants who reside out of the United States shall not exceed ten dollars, which shall be paid, upon the presentation of satisfactory vouchers, out of the appropriation for the payment of the examining surgeons, and through the United States consulate nearest to the claimant's place of residence. *Act of July 25, 1882 (22 Stat. L., 176).*

Non resident claimants.  
July 25, 1882, v. 22, p. 176.

**1692.** That the Commissioner of Pensions is hereby authorized to appoint surgeons who, under his control and direction shall make such examination of pensioners and claimants for pension or increased pension as he shall require; and he shall organize boards of surgeons, to consist of three members each, at such points in each State as he shall deem necessary, and all examinations, so far as practicable, shall be made by the boards, and no examination shall be made by one surgeon excepting under such circumstances as make it impracticable for a claimant to present himself before a board: *Provided*, That the Commissioner may, when in his opinion the exigencies of the service require it, organize a board of three surgeons who, under his direction, shall review the work of any regularly-appointed board or surgeon: *Provided further*, That all

Commissioner authorized to appoint surgeons, etc.

Boards of surgeons.

Special board of surgeons.

*Provisos.*

Sec. 4, July 25, 1882, v. 22, p. 175.



examinations shall be thorough and searching, and the certificate contain a full description of the physical condition of the claimant at the time, which shall include all the physical and rational signs and a statement of all structural changes.

Free for examination, etc.

*Proviso.*

*Proviso.*

The fee for each examination, and satisfactory certificate thereof, shall be two dollars to each member when made by a board, and two dollars when made by one surgeon: *Provided*, That when a claimant is so disabled as not to be able to present himself to a board of surgeons for examination, the Commissioner may order a surgeon to make the examination at the claimant's residence; and the fee for such examination shall be two dollars, in addition to the payment of the actual traveling expenses of the surgeon: *Provided further*, That no fee shall be allowed or paid to any member of such board of examining surgeons who does not actually participate in such examination and sign the certificate thereof.<sup>1</sup> *Sec. 4, act of July 25, 1882 (22 Stat. L., 175).*

#### FEES OF EXAMINING SURGEONS.

Examinations.  
July 18, 1894, v.  
28, p. 113.

No fee unless  
service rendered.

Claimant may  
inspect report.  
July 18, 1894, v.  
28, p. 113.

**1693.** Each member of each examining board shall, as now authorized by law, receive the sum of two dollars for the examination of each applicant whenever five or a less number shall be examined on any one day, and one dollar for the examination of each additional applicant on such day: *Provided*, That if twenty or more applicants appear on one day, no fewer than twenty shall, if practicable, be examined on said day, and that if fewer examinations be then made, twenty or more having appeared, then there shall be paid for the first examinations made on the next examination day the fee of one dollar only until twenty examinations shall have been made: *Provided further*, That no fees shall be paid to any member of an examining board unless personally present and assisting in the examination of applicant.<sup>2</sup> *Act of July 18, 1894 (28 Stat. L., 113).*

**1694.** That the report of such examining surgeons when filed in the Pension Office shall be open to the examination and inspection of the claimant or his attorney, under such reasonable rules and regulations as the Secretary of the Interior may provide. *Act of July 18, 1894 (28 Stat. L., 113).*

<sup>1</sup> This section replaces, in part, section 4775, Revised Statutes, which authorized the appointment of boards of examining surgeons and prescribed their fees.

<sup>2</sup> A similar provision will be found in the acts of July 2, 1886 (24 Stat. L., 122); March 1, 1887 (24 Stat. L., 440); June 7, 1888 (25 Stat. L., 174); March 1, 1889 (25 Stat. L., 782); June 30, 1890 (26 Stat. L., 188); March 3, 1891 (26 Stat. L., 1082); July 13, 1892 (27 Stat. L., 119); March 1, 1893 (27 Stat. L., 524); July 18, 1894 (28 Stat. L., 113); March 2, 1895 (28 Stat. L., 403); and March 6, 1896 (29 Stat. L., 45).

## ASSIGNMENTS, ETC.

**1695.** Any pledge, mortgage, sale, assignment, or transfer of any right, claim, or interest in any pension which has been, or may hereafter be, granted, shall be void and of no effect, and any person who shall pledge, or receive as a pledge, mortgage, sale, assignment or transfer of any right, claim, or interest in any pension, or pension certificate, which has been, or may hereafter be granted or issued, or who shall hold the same as collateral security for any debt, or promise, or upon any pretext of such security, or promise, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution; and any person who shall retain the certificate of a pensioner and refuse to surrender the same upon the demand of the Commissioner of Pensions, or a United States pension agent, or any other person, authorized by the Commissioner of Pensions, or the pensioner, to receive the same shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars and the costs of the prosecution. *Sec. 2, act of February 28, 1883 (22 Stat. L., 432).*

Any pledge or transfer of pension void.

Sec. 2, Feb. 28, 1883, v. 22, p. 432.

Penalties.  
Sec. 4745, R. S.

**1696.** No sum of money due, or to become due, to any pensioner, shall be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, whether the same remains with the Pension-Office, or any officer or agent thereof, or is in course of transmission to the pensioner entitled thereto, but shall inure wholly to the benefit of such pensioner.

Pension not liable to attachment, etc.

*Ibid.*  
Sec. 4747, R. S.

## INVESTIGATIONS.

**1697.** The Commissioner of Pensions is authorized to detail, from time to time, clerks or persons employed in his office to make special examinations into the merits of such pension or bounty land claims, whether pending or adjudicated, as he may deem proper, and to aid in the prosecution of any party appearing on such examinations to be guilty of fraud, either in the presentation or in procuring the allowance of such claims; and any person so detailed shall have power to administer oaths and take affidavits and depositions in the course of such examinations, and to orally examine witnesses, and may employ a stenographer, when deemed necessary by the Commissioner of Pensions, in important cases, such stenographer to be paid by such clerk or person, and the amount so paid to be allowed in his accounts. *Sec. 2, act of July 25, 1882 (22 Stat. L., 175).*

Special service in investigating suspected attempts at fraud.

Mar. 3, 1873, c. 234, s. 30, v. 17, p. 575. Sec. 2, July 25, 1882, v. 22, p. 175.  
Sec. 4741, R. S.

Investigating officers may administer oaths, affidavits, etc.

Sec. 3, Mar. 3, 1891, v. 26, p. 1083.

**1698.** That the same power to administer oaths and take affidavits, which by virtue of section forty-seven hundred and forty-four of the Revised Statutes is conferred upon clerks detailed by the Commissioner of Pensions from his office to investigate suspected attempts at fraud on the Government through and by virtue of the pension laws, and to aid in prosecuting any person so offending, shall be, and is hereby, extended to all special examiners or additional special examiners employed under authority of Congress to aid in the same purpose. *Sec. 3, act of March 3, 1891 (26 Stat. L., 1083).*

Subpœnas to witnesses.

Sec. 3, July 25, 1882, v. 22, p. 175.

**1699.** That in addition to the authority conferred by section one hundred and eighty-four, title four of the Revised Statutes, any judge or clerk of any court of the United States in any State, District, or Territory shall have power, upon the application of the Commissioner of Pensions, to issue a subpœna for a witness, being within the jurisdiction of such court, to appear, at a time and place in the subpœna stated, before any officer authorized to take depositions to be used in the courts of the United States, or before any officer, clerk, or person from the Pension Bureau designated or detailed to investigate or examine into the merits of any pension claim and authorized by law to administer oaths and take affidavits in such investigation or examination, there to give full and true answers to such written interrogatories and cross interrogatories as may be propounded, or to be orally examined and cross-examined upon the subject of such claim; and witnesses subpœnaed pursuant to this and the preceding section shall be allowed the same compensation as is allowed witnesses in the courts of the United States, and paid in the same manner.<sup>1</sup> *Sec. 3, act of July 25, 1882 (22 Stat. L., 175).*

Witnesses' fees.

#### MISCELLANEOUS.

Description of fiduciary agent.

Feb. 10, 1891, v. 26, p. 746.

**1700.** Every guardian, conservator, curator, committee, tutor, or other person having charge and custody in a fiduciary capacity of the pension of his ward, who shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, shall be punished by fine not exceeding two thousand dollars or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court. *Act of February 10, 1891 (26 Stat. L., 746).*

Penalty.

Sec. 4783, R. S.

<sup>1</sup> For power to issue compulsory process in certain cases see section 186, Revised Statutes.

**1701.** Nothing in this Title<sup>1</sup> shall be so construed as to allow more than one pension at the same time to the same person, or to persons entitled jointly; but any pensioner who shall so elect may surrender his certificate, and receive, in lieu thereof, a certificate for any other pension to which he would have been entitled had not the surrendered certificate been issued. But all payments previously made for any period covered by the new certificate shall be deducted from the amount allowed by such certificate.<sup>2</sup>

Only one pension at a time.  
Sec. 20, *ibid.*  
Sec. 4715, R. S.

**1702.** All pensioners whose names are now on the pension-roll or who are entitled to restoration to the roll under any act of Congress, shall be entitled to the continuance of such pensions under the provisions and limitations of this Title, and to such further increase of pension as is herein provided.

Continuance of pensions.  
Sec. 4733, R. S.

**1703.** The provisions of law which allow the withholding of the compensation of any person who is in arrears shall not be construed to authorize the pension of any pensioner of the United States to be withheld.

Pensions not to be withheld.  
May 20, 1836, c. 77, v. 5, p. 31.  
Sec. 4734, R. S.

**1704.** That hereafter no pension shall be allowed or paid to any officer, non-commissioned officer, or private in the Army, Navy, or Marine Corps of the United States, either on the active or retired list.<sup>3</sup> *Act of March 3, 1891 (26 Stat. L., 1082).*

Pensions not allowed to persons in Army or naval service.  
Mar. 3, 1891, v. 26, p. 1082.

**1705.** No person in the Army, Navy, or Marine Corps shall draw both a pension as an invalid, and the pay of his rank or station in the service, unless the disability for which the pension was granted be such as to occasion his employment in a lower grade, or in the civil branch of the service.

Both pension and pay not allowed unless, etc.  
Apr. 30, 1844, c. 15, v. 5, p. 657;  
Aug. 16, 1841, c. 3, s. 2, v. 5, p. 440.  
Sec. 4724, R. S.

**1706.** That all persons who, under and by virtue of the first section of the act entitled "An act supplementary to the several acts relating to pensions," approved March third, eighteen hundred and sixty-five, were deprived of their pensions during any portion of the time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six, by reason of their being in the civil service of the United States, shall be paid their said pensions, withheld by virtue of said section of the act aforesaid, for and during the said

Soldiers in the civil service.  
Payment of pensions withheld.  
Mar. 1, 1879, v. 20, p. 327.

<sup>1</sup> Title LVII, Revised Statutes. By the terms of section 4722 of the Revised Statutes the provisions of this Title are made applicable to the officers and privates of the Missouri State militia and the Missouri provisional militia in certain cases.

<sup>2</sup> The act of March 1, 1893 (27 Stat. L., 524) contains the requirement that no pension shall be paid to a non-resident who is not a citizen of the United States, except for actual disabilities incurred in the service. This statute was repealed by the act of March 2, 1895 (28 Stat. L., 703).

<sup>3</sup> Section 2 of the act of August 29, 1890 (26 Stat. L., 371), contained the requirement that "Hereafter no officer of the Army, Navy, or Marine Corps on the retired list shall draw or receive any pension under any law."

period of time from the third of March, eighteen hundred and sixty-five, to the sixth of June, eighteen hundred and sixty-six.<sup>1</sup> *Act of March 1, 1879 (20 Stat. L., 327).*

Certain soldiers and sailors not to be deemed deserters, etc.

July 19, 1867, c. 28, v. 15, p. 14.

Sec. 4749, R. S.

**1707.** No soldier or sailor shall be taken or held to be a deserter from the Army or Navy who faithfully served according to his enlistment until the nineteenth day of April, eighteen hundred and sixty-five, and who, without proper authority or leave first obtained, quit his command or refused to serve after that date; but nothing herein contained shall operate as a remission of any forfeiture incurred by any such soldier or sailor of his pension; but this section shall be construed solely as a removal of any disability such soldier or sailor may have incurred by the loss of his citizenship in consequence of his desertion.

Six dollars a month made minimum rate.

Mar. 2, 1895, v. 28, p. 704.

**1708.** That from and after the passage of this Act, all pensioners now on the rolls, who are pensioned at less than six dollars per month, for any degree of pensionable disability, shall have their pensions increased to six dollars per month; and that hereafter, whenever any applicant for pension would, under existing rates, be entitled to less than six dollars for any single disability, or several combined disabilities, such pensioner shall be rated at not less than six dollars per month: *Provided also*, That the provisions hereof shall not be held to cover any pensionable period prior to the passage of this act, nor authorize a re-rating of any claims for any part of such period, nor prevent the allowance of lower rates than six dollars per month, according to the existing practice in the Pension Office in pending cases covering any pensionable period prior to the passage of this Act. *Act of March 2, 1895 (28 Stat. L., 704).*

No prior effect.

Disloyalty a bar to pension.

Sec. 4716, R. S.

**1709.** No money on account of pension shall be paid to any person, or to the widow, children, or heirs of any deceased person, who in any manner voluntarily engaged in or aided or abetted the late rebellion against the authority of the United States.

Law prohibiting pensions to persons aiding rebellion modified.

Mar. 3, 1877, v. 19, p. 403.

**1710.** That the law<sup>2</sup> prohibiting the payment of any money on account of pensions to any person, or to the widow, children, or heirs of any deceased person, who, in any manner, engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterward voluntarily enlisted in the Army of the United States, and who,

<sup>1</sup> The act of June 6, 1866 (14 Stat. L., 57), repealed the requirement of the act of March 3, 1865, depriving certain persons employed in the civil service of the United States of pensions to which they were otherwise entitled.

<sup>2</sup> Section 4716, Revised Statutes, paragraph 1709, *post*.

while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty.

*Act of March 3, 1877 (19 Stat. L., 403).*

1711. That the law prohibiting the payment of any money on account of pension to any person, or to the widow, child, or heirs of any deceased person, who in any manner engaged in or aided or abetted the late rebellion against the authority of the United States, shall not be construed to apply to such persons as afterwards voluntarily enlisted in either the Navy or Army of the United States, and who, while in such service, incurred disability from a wound or injury received or disease contracted in the line of duty.

*Acts of March 3, 1877, and August 1, 1892 (27 Stat. L., 340).*

Disloyalty, as a bar, removed in certain cases. Mar. 3, 1877; Aug. 1, 1892, v. 27, p. 340.

1712. If any guardian having the charge and custody of the pension of his ward shall embezzle the same in violation of his trust, or fraudulently convert the same to his own use, he shall be punished by fine not exceeding two thousand dollars, or imprisonment at hard labor for a term not exceeding five years, or both, at the discretion of the court.

Embezzlement of pension by guardian. Sec. 5486, R. S.

1713. That any pension heretofore or that may hereafter be granted to any applicant therefor under any law of the United States authorizing the granting and payment of pensions, on application made and adjudicated upon, shall be deemed and held by all officers of the United States to be a vested right in the grantee to that extent that payment thereof shall not be withheld or suspended until, after due notice to the grantee of not less than thirty days, the Commissioner of Pensions, after hearing all the evidence, shall decide to annul, vacate, modify, or set aside the decision upon which such pension was granted. Such notice to grantee must contain a full and true statement of any charges or allegations upon which such decision granting such pension shall be sought to be in any manner disturbed or modified.<sup>1</sup> *Act of December 21, 1893 (28 Stat. L., 18).*

Suspension of pension, notice, etc., to pensioner. Act of Dec. 21, 1893, v. 28, p. 18.

Pensions to be deemed vested rights.

<sup>1</sup> The act of May 21, 1872 (not incorporated in the Revised Statutes), contained a provision imposing a penalty for the retention by an attorney, or claim agent, of the discharge certificate or land warrant of a discharged soldier, sailor, or marine.

## CHAPTER XL.

### THE SOLDIERS' HOME.

Par.	Par.
1714. Board of Commissioners.	1729-1733. Funds for support of the
1715, 1716. Officers.	Soldiers' Home.
1717, 1718. Duties of Commissioners.	1734-1736. Miscellaneous provisions.
1719. Inspection.	
1720-1728. Admission and discharge of inmates.	

#### BOARD OF COMMISSIONERS.

Board of commissioners of the Soldiers' Home.

Mar. 3, 1851, c. 25, s. 2 v. 9, p. 595;  
Mar. 3, 1859, c. 83, s. 4, v. 11, p. 434;  
Sec. 10, Mar. 3, 1883, v. 22, p. 565.  
Sec. 4815, R. S.

**1714.** That the Board of Commissioners of the Soldiers' Home shall hereafter consist of the General in Chief commanding the Army, the Surgeon General, the Commissary General, the Adjutant General, the Quartermaster General, the Judge Advocate General and the Governor of the Home, and the General in Chief shall be President of the Board, and any four of them shall constitute a quorum for the transaction of business; whose duty it shall be to examine and audit the accounts of the treasurer quarter-yearly, and to visit and inspect the Soldiers' Home at least once in every month. The majority shall also have power to establish, from time to time, regulations for the general and internal direction of the institution, to be submitted to the Secretary of War for approval; and may do any other acts necessary for the government and interests of the same, as authorized by this chapter. *Sec. 10, act of March 3, 1883 (22 Stat. L., 565).*

#### OFFICERS.

Officers.

Mar. 3, 1851, c. 25, s. 3, v. 9, p. 595.  
Sec. 4816, R. S.

**1715.** The officers of the Soldiers' Home shall consist of a governor, a deputy governor, and a secretary, for each separate site of the home, the latter to be also the treasurer; and the officers shall be taken from the Army, and appointed or removed, from time to time, as the interests of the institution may require, by the Secretary of War, on the recommendation of the board of commissioners.

Governor and officers selected by the President of the United States.

**1716.** That the Governor and all other officers of the Home shall be selected by the President of the United States, and the Treasurer of the Home shall be required to

give a bond in the penal sum of twenty thousand dollars for the faithful performance of his duty.<sup>1</sup> *Sec. 7, act of March 3, 1883 (22 Stat. L., 564).* Treasurer to give bond  
Sec. 7, Mar. 3, 1883, v. 22, p. 564.

## DUTIES OF COMMISSIONERS.

1717. The commissioners of the Soldiers' Home, by and with the approval of the President, shall procure for immediate use, at a suitable place or places, a site or sites for the Soldiers' Home, and if the necessary buildings cannot be procured with the sites, to have the same erected, having due regard to the health of the locations, facility of access, and economy, and giving preference to such places as, with the most convenience and least cost, will accommodate the persons entitled to the benefits of the Soldiers' Home.<sup>1</sup> Sites and buildings.  
Sec. 8, *ibid.*, p. 597.  
Sec. 4817, R. S.

1718. That the board of commissioners of the Soldiers' Home shall every year report in writing to the Secretary of War, giving a full statement of all receipts and disbursements of money, of the manner in which the funds are invested of any changes in the investments and the reasons therefor, of all admissions and discharges, and generally of all facts that may be necessary to a full understanding of the condition and management of the Home. The Secretary of War shall have power to call for and require any omitted facts which in his judgment should be stated to be added. This annual report shall be, by the Secretary of War, together with the report of the inspecting officer hereinafter provided for, transmitted to Congress at the first session thereafter, and he shall also cause the same to be published in orders to the Army, a copy thereof to be deposited in each garrison and post library. *Act of March 3, 1883 (22 Stat. L., 565).* Regulations prescribed for Soldiers' Home, Washington, D. C., etc.  
Board of commissioners to make annual report, etc.  
Mar. 3, 1883, v. 22, p. 565.

Secretary of War to transmit report, etc., to Congress.

## INSPECTION.

1719. That the Inspector General of the Army shall, in person, once in each year thoroughly inspect the Home, its records, accounts, management, discipline, and sanitary condition, and shall report thereon in writing, together with such suggestions as he desires to make. *Sec. 2, act of March 3, 1883 (22 Stat. L., 564).* Inspector-Gen. eral of Army to inspect and make report, etc.  
Sec. 2, Mar. 3, 1883, v. 22, p. 564.

<sup>1</sup>Held that a medical officer of the Army occupying quarters at the Soldiers' Home was not thereby precluded from receiving commutation of quarters at New York on being ordered to duty there as a member of a medical examining board. The quarters occupied by him at the Home are not "public quarters" in the sense of paragraph 1480, Army Regulations; he does not occupy them at the expense of the United States; and by allowing him the commutation the Government is not put to a double expense for his quarters. (Dig. J. A. Gen., 706, par. 7.)



## ADMISSION AND DISCHARGE OF INMATES.

Who may become members of the Soldiers' Home.

Mar. 3, 1851, c. 25, s. 1, v. 9, p. 595; Mar. 3, 1859, c. 83, ss. 5, 7, v. 11, p. 434.

Sec. 4814, R. S.

**1720.** All soldiers of the Army of the United States, and all soldiers who have been, or may hereafter be, of the Army of the United States, and who have contributed, or may hereafter contribute, according to section forty-eight hundred and nineteen, to the support of the Soldiers' Home hereby created, and the invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve, and of all subsequent wars, shall under the restrictions and provisions which follow, be members of the Soldiers' Home, with all the rights annexed thereto.

What persons are entitled to benefits of Soldiers' Home.

Mar. 3, 1851, c. 25, s. 4, v. 9, p. 596; Mar. 3, 1859, c. 83, s. 5, v. 11, p. 434.

Sec. 4821, R. S.

**1721.** The following persons, members of the Soldiers' Home, according to section forty-eight hundred and fourteen, shall be entitled to the rights and benefits herein conferred, and no others:

First. Every soldier of the Army of the United States who has served, or may serve, honestly and faithfully twenty years in the same.

Second. Every soldier and every discharged soldier, whether regular or volunteer, who has suffered, or may suffer, by reason of disease or wounds incurred in the service and in the line of his duty, rendering him incapable of further military service, if such disability was not occasioned by his own misconduct.

Third. The invalid and disabled soldiers, whether regulars or volunteers, of the war of eighteen hundred and twelve, and of all subsequent wars.<sup>1</sup>

Rights of pensioners and surrender of pensions.

Mar. 3, 1851, c. 25, s. 5, v. 9, p. 596; Mar. 3, 1859, c. 83, s. 6, v. 11, p. 434.

Sec. 4820, R. S.

**1722.** The fact that one to whom a pension has been granted for wounds or disability received in the military service has not contributed to the funds of the Soldiers' Home shall not preclude him from admission thereto. But all such pensioners shall surrender their pensions to the Soldiers' Home during the time they remain therein and voluntarily receive its benefits.<sup>2</sup>

Who are excluded.

Mar. 3, 1851, c. 25, s. 6, v. 9, p. 596.

Sec. 4822, R. S.

**1723.** The benefits of the Soldiers' Home shall not be extended to any soldier in the regular or volunteer service, convicted of felony or other disgraceful or infamous crimes of a civil nature, after his admission into the service of the United States; nor shall any one who has been a deserter, mutineer, or habitual drunkard be received, without such

<sup>1</sup> Held that under section 4821, Revised Statutes, invalid and disabled soldiers of the war of the rebellion and of Indian wars were entitled to the benefits of the Soldiers' Home, although the disability may not have grown out of their military service, provided it be not the result of their own misconduct as indicated in section 4822, Revised Statutes. (Dig. J. A. Gen., 705, par. 1.)

<sup>2</sup> Section 4820, Revised Statutes, admits of no other reasonable construction than that only invalid pensioners who had not contributed to the funds of the Soldiers' Home were bound to surrender to it their pensions while receiving its benefits. (U. S. v. Bowen, 100 U. S., 508; but see paragraph 1726, *post*.)

evidence of subsequent service, good conduct, and reformation of character, as is satisfactory to the commissioners.

1724. Any soldier admitted into the Soldiers' Home for disability who recovers his health, so as to become fit again for military service, if under fifty years of age, shall be discharged.<sup>1</sup>

Discharge.  
Sec. 5, *ibid.*  
Sec. 4823, R. S.

1725. That the board of commissioners are authorized to aid persons who are entitled to admission to the Home, by out-door relief, in such manner and to such an extent as they may deem proper; but such relief shall not exceed the average cost of maintaining an inmate of the Home. *Sec. 6, act of March 3, 1883 (22 Stat. L., 565).*

Aid to persons,  
etc., by outdoor  
relief.  
Sec. 6, Mar. 3,  
1883, v. 22, p. 565.

1726. That any inmate of the Home who is receiving a pension from the government, and who has a child, wife, or parent living, shall be entitled, by filing with the pension agent from whom he receives his money a written direction to that effect, to have his pension, or any part of it, paid to such child, wife, or parent. The pensions of all who now are or shall hereafter become inmates of the Home, except such as shall be assigned as aforesaid, shall be paid to the treasurer of the Home. The money thus derived shall not become a part of the funds of the Home, but shall be held by the treasurer in trust for the pensioner to whom it would otherwise have been paid, and such part of it as shall not sooner have been paid to him shall be paid to him on his discharge from the institution. The board of commissioners may from time to time pay over to any inmate such part of his pension-money as they think best for his interest and consistent with the discipline and good order of the Home, but such pensioner shall not be entitled to demand or have the same so long as he remains an inmate of the Home. In case of the death of any pensioner, any pension money due him remaining in the hands of the treasurer shall be paid to his legal heirs, if demand is made within three years; otherwise the same shall escheat to the Home. *Sec. 4, act of March 3, 1883 (22 Stat. L., 564).*

Pension in-  
mates of Home  
can allot portion  
of pension, etc.

Pensions, etc.,  
to be paid to  
treasurer.  
Sec. 4, Mar. 3,  
1883, v. 22, p. 564.

Pension paid  
in full on dis-  
charge of pen-  
sioner from the  
Home.

Death of pen-  
sioner; money  
due, etc., paid to  
legal heirs.

1727. That a suitable uniform shall be furnished to every inmate of the Home, without cost to him. *Sec. 5, act of March 3, 1883 (22 Stat. L., 565).*

Uniform to be  
furnished in-  
mates free of  
cost.  
Sec. 5, Mar. 3,  
1883, v. 22, p. 565.

<sup>1</sup>An inmate is not required to remain at the Home if he wishes to leave it. The privileges of the institution may be renounced by any act showing an intention to renounce them—such as direct notice of such intention, or by an absenting with the evident purpose of not returning. In February, 1864, a certain inmate was transferred from the Home to the Government Insane Hospital, and was discharged thence as sane in June, 1864. He did not return to the Home and was not again heard of till March, 1886, when it was ascertained that he was at the State Insane Hospital of Pennsylvania. As he was sane when he left the Government Hospital and did not return to the Home within a reasonable time, but remained absent nearly twenty-two years, held that he must be deemed, in the absence of contrary evidence, to have intended to permanently separate himself from the institution, and that he therefore was not now an inmate or member of the same. (Dig., J. A. Gen., 505, par. 4.)

Inmates sub-  
ject to Articles of  
War.

Mar. 3, 1859, c.  
83, s. 7, v. 11, p. 434.  
Sec. 4824, R. S.

1728. All persons admitted into the Soldiers' Home shall be subject to the Rules and Articles of War in the same manner as soldiers in the Army.<sup>1</sup>

#### FUNDS FOR SUPPORT OF THE SOLDIERS' HOME.

Funds for Sol-  
diers' Home.

Mar. 3, 1851, c.  
25, s. 7, v. 9, p. 596;  
July 5, 1862, c.  
133, s. 2, v. 12, p.  
508.

Sec. 4818, R. S.

1729. For the support of the Soldiers' Home the following funds are set apart, and are hereby appropriated: All stoppages or fines adjudged against soldiers by sentence of courts-martial, over and above any amount that may be due for the re-imbursement of Government, or of individuals; all forfeitures on account of desertion; and all moneys belonging to the estates of deceased soldiers, which are or may be unclaimed for the period of three years subsequent to the death of such soldiers, to be repaid by the commissioners of the institution, upon the demand of the heirs or legal representatives of the deceased.<sup>2</sup>

Deduction from  
pay.

Mar. 3, 1851, c.  
25, s. 7, v. 9, p. 596;  
Mar. 3, 1859, c. 83,  
s. 7, v. 11, p. 434.

Sec. 4819, R. S.

1730. There shall be deducted from the pay of every non-commissioned officer, musician, artificer, and private of the

<sup>1</sup> Section 4824, Revised Statutes, subjecting the inmates of the Soldiers' Home to the Rules and Articles of War, is unconstitutional and a dead letter. 'These inmates are no part of the Army, nor are they supported by the United States. They are civilians occupying dwellings and sustained by funds held in trust for them. The territory of the Home being within the District of Columbia, and not having been exempted by Congress from the operation of the criminal laws of the District, the inmates are subject to those laws like any other residents. [Compare opinion of Attorney-General in 20 Opins., 514.] (Dig. J. A. Gen., p. 705, par. 2.)

The inmates of the Soldiers' Home wear the uniform of soldiers of the Army. They are therefore within the operation of section 1181 of the Revised Statutes relating to the District of Columbia, which makes penal the selling of liquor to persons wearing the uniform of soldiers. (Ibid., p. 705, par. 3.)

<sup>2</sup> The funds for the support of the Soldiers' Home are not of the class of public moneys annually appropriated for a specific object, as for the pay of the Army, but a special trust fund committed to and administered by the Board of Commissioners for the benefit of the institution. From an early period in the history of the Home it has been the usage for the commissioners to permit the officers of the Home (retired officers of the Army residing at the Home) gratuitously to receive and use a reasonable portion of the ordinary supplies of fuel, light, forage, milk, ice, and vegetables, either produced at the Home or obtained for its consumption. Held that such allowance was not in contravention of law; that the articles thus issued are not of the class of military pay and emoluments, and therefore unauthorized because not allowed by law to retired officers, but are a reasonable share of the supplies for the use and benefit of the Home, the disposition of which is properly within the discretion of the commissioners as trustees of the funds of the Home and as charged by law with the "government and interests of the same." And similarly held in regard to the amount of \$1,000, allowed annually out of such funds to the treasurer of the Home, as a compensation for his special services and in consideration of his pecuniary responsibility as a bonded officer. [See concurring opinion of Attorney-General, in 20 Opins., 350.] (Ibid., p. 706, par. 6.)

Section 4818, Revised Statutes, appropriates as one of the funds for the support of the Soldiers' Home "all forfeitures on account of desertion." Held that this appropriation included the retained pay of soldiers, as forfeited by desertion under the provisions of sections 1281 and 1282, Revised Statutes, and of the act of June 16, 1890, chapter 426, section 1. The retained pay is merely a fraction of the monthly pay of the soldier, earned with the rest of his monthly pay, as a part of the entire consideration for service rendered, but of which the payment—the right to receive—is deferred. The theory that it is not to be regarded as earned till the soldier's service is concluded and he receives an honorable discharge, is rebutted by the statutory provisions above cited, and especially by the provision of the act of 1890, which treats the retained pay as pay constantly accruing and as a continuing deposit for the use of the soldier, drawing interest from the end of each year in which it accrues. The ruling of the Supreme Court in *United States v. Landers* (92 U. S., 77) is not opposed to this view, but, as construed by the same court in *United States v. Kingsley* (138 U. S., 87), shows that the "forfeiture" referred to in sections 1281 and 1282, Revised Statutes, was regarded by the court as meaning a loss of an acquired right. And the act of 1890, passed since this ruling, has confirmed this interpretation. Thus a soldier, in deserting, forfeits, with the main portion of his pay, the portion which has been retained, his right to this lesser portion being as much acquired and perfected as his right to the greater portion. Both forfeitures rest upon the same basis, and the aggregate forfeiture of both is appropriated by the statute to the support of the Soldiers' Home. (Ibid., 706, par. 8.)

Army of the United States the sum of twelve and a half cents per month, which sum so deducted shall, by the Pay Department of the Army, be passed to the credit of the commissioners of the Soldiers' Home. The commissioners are also authorized to receive all donations of money or property made by any person for the benefit of the institution, and hold the same for its sole and exclusive use. But the deduction of twelve and a half cents per month from the pay of non-commissioned officers, musicians, artificers, and privates of regiments of volunteers, or other corps or regiments raised for a limited period, or for a temporary purpose or purposes, shall only be made with their consent.

**1731.** That all funds of the Home not needed for current use, and which are not now invested in United States registered bonds, shall, as soon as received, or as soon as present investments can be converted into money without loss, be deposited in the Treasury of the United States to the credit of the Home, as a permanent fund, and shall draw interest at the rate of three per centum per annum, which shall be paid quarterly to the treasurer of the Home; and the proceeds of such registered bonds, as they are paid, shall be deposited in like manner. No part of the principal sum so deposited shall be withdrawn for use except upon a resolution of the board of commissioners stating the necessity and approved by the Secretary of War. *Sec. 8, act of March 3, 1883 (22 Stat. L., 565).*

Funds, etc., of the Home to be deposited in the Treasury United States as a permanent fund.  
Sec. 8, Mar. 3, 1883, v. 22, p. 565.

Interest.

Principal sum to be used only by resolution of board, etc.

**1732.** That no officers of the Home shall borrow any money on the credit of the Home for any purpose, nor shall any pledge of any of its property or securities for any purpose be valid. *Sec. 9, act of March 3, 1883 (22 Stat. L., 565).*

Borrowing money on credit of Home prohibited.  
Sec. 9, Mar. 3, 1883, v. 22, p. 565.

**1733.** That the Treasurer of the United States be, and he is hereby, authorized and directed to receive and keep on deposit, subject to the checks or drafts of the treasurer of the Soldier's Home in the District of Columbia, all funds which may now be under the control of the said Treasurer of the Soldier's Home, or may hereafter be furnished him or in any manner come into his possession for use in defraying the current expenses of maintaining the said Soldiers' Home, and, upon the request of said treasurer of the Soldiers' Home, there shall be transferred, from funds to his credit with the United States Treasurer, and placed to his credit with the assistant treasurer of the United States in New York City, New York, such sums as he may require monthly or quarterly for payments on account of "out-door

United States Treasurer to be custodian of funds, etc., of Jan. 16, 1891, v. 26, p. 718.

Transfer of funds to assistant treasurer in New York.

relief" to members of the said Soldiers' Home residing at a distance therefrom.<sup>1</sup> *Act of January 16, 1891 (26 Stat. L., 718).*

#### MISCELLANEOUS PROVISIONS.

Expenditures limited, etc., except on approval of board.

Supplies, how purchased.

Sec. 3, Mar. 3, 1883, v. 22, p. 565.

**1734.** That no new buildings shall be erected or new grounds purchased, nor shall any expenditure of more than five thousand dollars be made, until the action of the board thereon shall be approved by the Secretary of War. All supplies that can be purchased upon contract shall be so purchased, after due notice by advertisement, of the lowest responsible bidder. Such bidder shall give bond, with proper security, for the performance of his contract. *Sec. 3, act of March 3, 1883 (22 Stat. L., 565).*

Liquor licenses prohibited within 1 mile of Soldiers' Home, D. C.

Feb. 28, 1891, v. 26, p. 797.

**1735.** That on and after the passage of this act no license for the sale of intoxicating liquor at any place within one mile of the Soldiers' Home property in the District of Columbia shall be granted. *Act of February 28, 1891 (26 Stat. L., 797).*

Appropriation for clerical labor in adjusting accounts, etc.

Sec. 12, Mar. 3, 1883, v. 22, p. 566.

**1736.** That the sum of ten thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to be expended by the Secretary of the Treasury in the employment of additional clerical force to be used in adjusting the accounts in the Treasury Department of those funds which under the law belong to the Soldiers' Home.<sup>2</sup> *Sec. 12, act of March 3, 1883 (22 Stat. L., 566).*

<sup>1</sup> Contracts for the Home should be entered into, not by the "Soldiers' Home," which is not an incorporated institution, but by the Board of Commissioners, who, as trustees for the Home, may make contracts which will bind the United States. (Dig. J. A. Gen., 706, par. 5.)

<sup>2</sup> Section 11 of the act of March 3, 1883 (22 Stat. L., p. 565), contains the provision "that all laws and parts of laws relating to the Soldiers' Home now in force and not inconsistent with this act are continued in force, and such as are inconsistent herewith are to that extent repealed."

## CHAPTER XLI.

### THE NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS.

Par.	Par.
1737-1742. Board of Managers.	1762. Admissions.
1743-1745. Estimates and appropriations.	1763-1765. State and Territorial homes.
1746-1754. Expenditures and accounts.	1766, 1767. Pensions to inmates.
1755. Inspections.	1768. Outdoor relief.
1756-1760. Officers.	1769-1774. Miscellaneous provisions.
1761. Establishment of Branch Homes.	

#### BOARD OF MANAGERS.

**1737.** The President, Secretary of War, Chief Justice, and such other persons as have been or from time to time may be associated with them, shall constitute a board of managers of an establishment for the care and relief of the disabled volunteers of the United States Army, to be known by the name and style of "The National Home for Disabled Volunteer Soldiers," and have perpetual succession, with powers to take, hold, and convey real and personal property, establish a common seal, and to sue and be sued in courts of law and equity; and to make by-laws, rules, and regulations, not inconsistent with law, for carrying on the business and government of the home, and to affix penalties thereto.

**1738.** Eleven managers of the National Home for Disabled Volunteers shall be elected from time to time, as vacancies occur, by joint resolution of Congress. They shall all be citizens of the United States, and all residents of States which furnished organized bodies of soldiers to aid in suppressing the rebellion commenced in eighteen hundred and sixty one; and no two of them shall be residents of the same State, and no person who gave aid or countenance to the rebellion shall ever be eligible. The

Organization of the National Home for Disabled Volunteer Soldiers.  
 Mar. 21, 1866, c. 21, s. 1, v. 14, p. 10;  
 Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417;  
 Mar. 3, 1875, c. 129, v. 18, p. 359;  
 Feb. 26, 1875, J. R. No. 5, v. 18, p. 524.  
 Sec. 4825, R. S.

Election of citizen managers.  
 Mar. 21, 1866, c. 21, s. 3, v. 14, p. 10;  
 Mar. 12, 1867, c. 1, v. 15, p. 1; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.  
 Sec. 4826, R. S.

term of office of these managers shall be for six years, and until a successor is elected.<sup>1</sup>

Election of officers of the board of managers.

Mar. 21, 1866, c. 21, s. 2, v. 14, p. 10; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.

Sec. 4827, R. S.

**1739.** The twelve [fourteen] managers of the National Home for Disabled Volunteer Soldiers shall elect from their own number a president, who shall be the chief executive officer of the board, two vice-presidents, and a secretary. Seven of the board, of whom the president or one of the vice-presidents shall be one, shall form a quorum for the transaction of business at any meeting of the board.<sup>1</sup>

Expenses of Board of Managers.

Aug. 18, 1894, v. 28, p. 412.

Sec. 4828, R. S.

**1740.** That hereafter no member of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall receive any compensation or pay for any services or duties connected with the Home; but the traveling and other actual expenses of a member, incurred while upon the business of the Home, may be reimbursable to such member: *Provided*, That the president and secretary of the Board of Managers may receive a reasonable compensation for their services as such officers, not exceeding four thousand dollars and two thousand dollars, respectively, per annum. *Act of August 18, 1894 (28 Stat. L., 412).*

Officers who may receive salaries.

Duties of Board of Managers.

Mar. 21, 1866, c. 21, s. 8, v. 14, p. 11; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.

Sec. 4834, R. S.

**1741.** The board of managers shall make an annual report of the condition of the National Home for Disabled Volunteer Soldiers to Congress on the first Monday of every January; and the board shall examine and audit the accounts of the treasurer and visit the home quarterly.

Estimates to show salaries, etc.

Aug. 5, 1892, v. 27, p. 384.

**1742.** That hereafter the statement of expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall each year be submitted in the annual book of estimates and shall be made to show the amount of salary or compensation paid to each of the officers and employees of said Board, and there shall also be submitted therewith a statement showing the number of officers appointed at each of the Branch Homes under Section four thousand eight hundred and twenty-nine of the Revised Statutes, the amount of salary or compensation paid to each, and the amount of allowance to each, if any, for contingent or other expenses.<sup>2</sup> *Act of August 5, 1892 (27 Stat. L., 384).*

#### ESTIMATES AND APPROPRIATIONS.

National Home for Disabled Volunteers.

1865, c. 91, s. 5, v. 13, p. 510, repealed in part. Mar. 3, 1875, v. 18, p. 359.

**1743.** That so much of the act entitled "An act to incorporate a National Military and Naval Asylum for the relief of totally disabled officers and men of the volunteer forces of the United States," approved March third, eighteen hundred and sixty-five, and of all acts amendatory thereof, as provides "that for the establishment and support of said

<sup>1</sup> The number of managers to be elected by joint resolution of Congress was fixed at ten by section 3 of the act of March 3, 1887, and at eleven by joint resolution No. 21 of March 3, 1891 (24 Stat. L., 444; 26 Stat. L., 1117).

<sup>2</sup> See, also, paragraph 1752, *post*.

asylum there shall be appropriated all stoppages or fines adjudged against officers and soldiers by sentence of court-martial or military commission, over and above the amounts necessary for the re-imbursement of the Government or of individuals; all forfeitures on account of desertion from the service; and all moneys due deceased officers and soldiers which now are or may be unclaimed for three years after the death of such officers and soldiers," be, and the same is hereby, repealed, to take effect on and after the first day of April, eighteen hundred and seventy-five. And from and after April first, eighteen hundred and seventy-five, no clerk shall be employed or paid in any Department of the Government for services rendered under any provision of said act of March third, eighteen hundred and sixty-five, or the acts amendatory thereof. And from and after the first day of April, eighteen hundred and seventy-five, no money shall be appropriated or drawn for the support and maintenance of what is now designated by law as the "National Home for Disabled Volunteer Soldiers," except by direct and specific annual appropriations by law.<sup>1</sup> *Act of March 3, 1875 (18 Stat. L., 359).*

Certain clerks  
not to be em-  
ployed, etc., after  
Apr. 1, 1875.

**1744.** And it shall be the duty of the managers of said home, on or before the first day of August in each year, to furnish, to the Secretary of War, estimates, in detail, for the support of said home for the fiscal year commencing on the first day of July thereafter; and the Secretary of War shall annually include such estimates in his estimates for his Department. And no moneys shall, after the first day of April, eighteen hundred and seventy-five, be drawn from the Treasury for the use of said home, except in pursuance of quarterly estimates, and upon quarterly requisitions by the managers thereof upon the Secretary of War, based upon such quarterly estimates, for the support of said home for not more than three months next succeeding such requisition. And no money shall be drawn or paid upon any such requisition while any balance heretofore drawn or received by said home, or for its use, from the Treasury, under the laws now or heretofore existing, and now held under investment or otherwise, shall remain unexpended. And the managers of said home shall, at the commence-

Support of  
Home.

Estimates.

Money; how  
drawn.  
Mar. 3, 1875,  
v. 18, p. 359.

<sup>1</sup>This statute repealed and replaced section 4831, which provided that "for the establishment and support of the National Home for Disabled Volunteer Soldiers there shall be appropriated all stoppages or fines adjudged against such officers and soldiers by sentence of court-martial or military commission, over and above the amounts necessary for the reimbursement of the Government or of individuals; all forfeitures on account of desertion from such service; and all moneys due such deceased officers and soldiers, which now are or may be unclaimed for three years after the death of such officers and soldiers, to be repaid upon the demand of the heirs or legal representatives of such deceased officers or soldiers. The Board of Managers are also authorized to receive all donations of money or property made by any person or persons for the benefit of the home, and to hold or dispose of the same for its sole and exclusive use."



ment of each quarter of the year, render to the Secretary of War an account of all their receipts and expenditures for the quarter immediately preceding, with the vouchers for such expenditures; and all such accounts and vouchers shall be authenticated by the officers of said home thereunto duly appointed by said managers, and audited, and allowed, as required by law for the general appropriations and expenditures of the War Department. *Act of March 3, 1875 (18 Stat. L., 359).*

Receipts and expenditures to be audited, etc.

Incidental expenses.  
Aug. 4, 1886,  
v. 24, p. 251.

**1745.** And hereafter the estimates for the support of the Home for Disabled Volunteer Soldiers shall be submitted by items.<sup>1</sup> *Act of August 4, 1886 (24 Stat. L., 251).*

#### EXPENDITURES AND ACCOUNTS.

Expenditures.  
Mar. 3, 1887, v.  
24, p. 539.

**1746.** But all of the expenditures of the said Home, including the expenses of the Board of Managers, shall be made subject to the general laws governing the disbursement of public moneys, so far as the same can be made applicable thereto, and shall be audited by the proper accounting officers of the Treasury, under such rules and regulations as may be prescribed by the Secretary of the Treasury.<sup>2</sup> *Act of March 3, 1887 (24 Stat. L., 539).*

Report of accounts.  
Mar. 3, 1891, v.  
26, p. 984.

**1747.** That the accounts relating to the expenditure of said sums, as also all receipts by said Home from whatever source, shall, in addition to the supervision now provided for, be reported to and supervised by the Secretary of War.<sup>3</sup> *Act of March 3, 1891 (26 Stat. L., 984).*

<sup>1</sup> See also the act of March 3, 1879 (20 Stat. L., 390).

<sup>2</sup> The act of June 20, 1878 (20 Stat. L., 223), contained the requirement "that all purchases of supplies exceeding the sum of one thousand dollars at any one time shall be made upon public tender after due advertisement."

Section 2 of the act of July 9, 1886 (24 Stat. L., 129), contained a provision that "it shall be the duty of the Secretary of the Treasury to require from the president and cashier of all banks used as depositories by the treasurer of the Home a deposit of bonds sufficient in amount to fully secure all moneys pertaining to said Home left on deposit with any such bank."

<sup>3</sup> The act of March 3, 1891, chapter 542, provides that "the accounts relating to the expenditure of such sums" (appropriated for the support of the Volunteer Home), "as also all receipts by said Home from whatever source, shall, in addition to the supervision now provided for, be reported to and supervised by the Secretary of War." *Held* (December, 1891) that this provision called for an examination of the accounts by the Secretary with a view to the correction of errors or unauthorized uses of the funds, and a formal approval in case none such were discovered; also that by the term "receipts" were included receipts not only from outside but from interior sources—as from the sale of flowers and provisions—so long as such continued to accrue. (*Dig. J. A. Gen.*, 743, par. 1.)

By the more recent act of March 3, 1893, (*a*) it is provided that "the Secretary of War shall hereafter exercise the same supervision over all receipts and disbursements on account of the Volunteer Soldiers' Homes as he is required by law to apply to the accounts of disbursing officers of the Army." *Held* (April, 1893) that the supervision here indicated should be analogous to that prescribed by the act of April 20, 1874, chapter 117, entitled "An act to provide for the inspection of the disbursements of appropriations made by officers of the Army," and should be regulated by the provisions of Titles LVIII and LXXII of the Army Regulations so far as applicable. (*Ibid*, 744, par. 2.)

*Held* later (December, 1893) that certain projected legislation proposing to vest in the Secretary of War a general supervision—that is to say, superintendence, direction, and control of all the affairs of the National Volunteer Homes—would be in direct conflict with the existing provision of section 4825. Revised Statutes, fixing and defining the corporate powers of "The National Home for Disabled Volunteer Soldiers;" and that if such legislation be adopted it should properly provide for a repeal of so much of this section as gives the corporation control of its affairs. It may, indeed, well be questioned whether the recent provision of March 3, 1893, chap-

1748. That all purchases of supplies exceeding the sum of one thousand dollars at any one time shall be made upon public tender after due advertisement, and that the expenditure for new buildings shall be expressly authorized in writing. *Act of March 3, 1879 (20 Stat. L., 390)*. That hereafter, upon proper application therefor, the Medical Department of the Army is authorized to sell medical and hospital supplies, at its contract prices, to the National Home for Disabled Volunteer Soldiers. *Act of June 11, 1896 (29 Stat. L., 445)*.

Purchase of supplies.  
Mar. 3, 1879, v. 20, p. 390; June 11, 1896, v. 29, p. 445.  
New buildings.  
Medicines, etc.

1749. That all sums received from sales of subsistence stores or other property of the National Home for Disabled Volunteer Soldiers shall be taken up by the disbursing officer under the proper current appropriation and be available for disbursement on account of that appropriation. *Act of August 18, 1894 (28 Stat. L., 412)*.

Receipts from sales.  
Aug. 18, 1894, v. 28, p. 412.

1750. That all amounts disbursed from the appropriation of a Branch Home shall be disbursed and accounted for monthly to the general treasurer by the treasurer of that Branch, except such expenditures for services, stationery, tableware, clothing and bedding as may be required by the Board of Managers to be legally made by the general treasurer, and all such stationery, tableware, clothing and bedding as may be required for each Branch Home shall be shipped directly from the place of purchase or manufacture to such Branch Home; and all disbursements shall be made in conformity with Sections thirty-six hundred and seventy-eight and thirty-six hundred and seventy-nine, Revised Statutes:<sup>1</sup> *Provided further*, That the balance of the posthumous fund, including the amount invested in bonds pertaining to that fund, that may be in the hands of the treasurer of any Branch of the Home on July first, eighteen hundred and ninety-four, shall be transferred to the appropriation for "current expenses, eighteen hundred and ninety-five," of that Branch Home, and thereafter all receipts on account of the effects of deceased members shall be credited to the appropriation for "current expenses" of the fiscal year during which such amounts were received, and all repayments of such amounts shall be made from and charged to the like appropriation for the fiscal year in which such repayments shall be made. *Act of August 18, 1894 (28 Stat. L., 411)*.

Accounts.  
Aug. 18, 1894, v. 28, p. 411.

Disbursements.

Use of posthumous fund.

Receipts from deceased members to be credited to current expenses.

ter 210, giving the Secretary of War "supervision over all receipts and disbursements on account of the Volunteer Soldiers' Homes," does not vest him with an authority greater than is consistent with the said corporate powers. (*Ibid.*, par. 3.)

<sup>1</sup> Under this provision the expenses of inspecting goods purchased for the Home are properly chargeable as an incident of the cost of such goods, and payable out of the appropriation for their purchase, in the absence of a specific appropriation for inspection. (2 Compt. Dec., 522.)

Balances of appropriations, disposal of.  
Oct. 2, 1888, v. 25, p. 543.

**1751.** And hereafter the provisions of section thirty-six hundred and ninety and thirty-six hundred and ninety-one of the Revised Statutes of the United States shall apply to all appropriations made for the maintenance of the National Home for Disabled Volunteer Soldiers. *Act of October 2, 1888 (25 Stat. L., 543)*:

Detailed statements to be submitted.  
Mar. 3, 1887, v. 24, p. 539.

**1752.** Hereafter the detailed statement of the expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers shall be reported direct to Congress in the annual report of the Board of Managers.<sup>1</sup> *Act of March 3, 1887 (24 Stat. L., 539)*.

Estimates.  
Oct. 2, 1888, v. 25, p. 543.

**1753.** That it shall be the duty of the managers of said Home, on or before the first day of October in each year, to furnish to the Secretary of War estimates, in detail, for the support of said Home for the fiscal year commencing on the first day of July thereafter, and the Secretary of War shall annually include such estimates in his estimates for his Department.<sup>2</sup> *Act of October 2, 1888 (25 Stat. L., 543)*.

Detailed estimates.  
Mar. 3, 1879, v. 20, p. 390.

**1754.** That the estimates hereafter submitted for the support of the National Home shall be made in detail, specifying the several items of expenditure, and separating the cost of food and other supplies in the form usually adopted for the Army, and that this specification be made for each soldiers' home separately. *Act of March 3, 1879 (20 Stat. L., 390)*.

#### INSPECTIONS.

Inspections.  
Aug. 18, 1894, v. 28, p. 412.

**1755.** That hereafter, once in each fiscal year, the Secretary of War shall cause a thorough inspection to be made of the National Home for Disabled Volunteer Soldiers, its records, disbursements, management, discipline, and condition, such inspection to be made by an officer of the Inspector-General's Department, who shall report thereon in writing, and said report shall be transmitted to Congress at the first session thereafter. *Act of August 18, 1894 (28 Stat. L., 412)*.

#### OFFICERS OF THE NATIONAL HOME.

Officers.

**1756.** The officers of the National Home shall consist of a governor, a deputy governor, a secretary, a treasurer, and such other officers as the managers may deem necessary. They shall be appointed from honorably discharged soldiers who served as mentioned in the following section;

Qualification.  
Apr. 11, 1892, v. 27, p. 15.  
Sec. 4829, R. S.

<sup>1</sup> See, also, paragraph 1742, *ante*.

<sup>2</sup> The act of March 3, 1885 (23 Stat. L., 510), had contained the requirement that "hereafter there shall annually be submitted to the Secretary of War a detailed statement of the expenses of the Board of Managers of the National Home for Disabled Volunteer Soldiers, who shall submit the same to Congress at the beginning of each session thereof."

and they may be appointed and removed, from time to time, as the interests of the institution may require, by the Board of Managers. *Act of April 11, 1892 (27 Stat. L., 15).*

1757. That the Board of Managers shall classify all the officers and employees of the National Home for Disabled Volunteer Soldiers and establish a rate of pay and allowance for each class, and the rate so established shall not be increased by fees, perquisites, allowances, or advantages under any pretense whatever; and no employee shall be borne on more than one pay roll or voucher.<sup>1</sup> *Act of August 18, 1894 (28 Stat. L., 412).*

Rates of pay to be classified.  
Aug. 18, 1894, v. 28, p. 412.

1758. That no person shall be eligible to or hold any position or employment in the government or management of any home who is interested in or connected with, directly or indirectly, any brewery, dram-shop, or distillery in the State where such home is located. *Act of March 3, 1887 (24 Stat. L., 540).*

Officers not to be connected with liquor traffic.  
Mar. 3, 1887, v. 24, p. 540.

1759. The general treasurer shall give good and sufficient bond to the United States in a sum not less than one hundred thousand dollars, as the Secretary of War may direct, and to be approved by him, faithfully to account for all public moneys and property which he may receive, and the treasurers of the several Branch Homes shall give good and sufficient bonds to the general treasurer in such sums as he may require, and to be approved by him, faithfully to account for all public moneys and property which they may receive. *Act of August 18, 1894 (28 Stat. L., 412).*

Bond of general treasurer.  
Aug. 18, 1894, v. 28, p. 412.

1760. That when an officer of the National Home for Disabled Volunteer Soldiers, not a member of the Board of Managers thereof, travels under orders on business for the Home he shall be allowed seven cents in lieu of all other expenses for each mile actually traveled, distance to be computed by the most direct through route *Act of August 18, 1894 (28 Stat. L., 412).*

Traveling expenses of officers.  
Aug. 18, 1894, v. 28, p. 412.

<sup>1</sup> The following rates of pay were established in the acts of August 18, 1894 (28 Stat. L., 409), and March 2, 1895 (28 Stat. L., 952): For president of the Board of Managers, four thousand dollars; secretary of the Board of Managers, two thousand dollars; one general treasurer, who shall not be a member of the Board of Managers, three thousand dollars; one inspector-general, two thousand five hundred dollars; one assistant inspector-general, two thousand dollars; clerical services for the offices of the president and general treasurer, four thousand five hundred dollars; messenger service for president's office, one hundred and forty-four dollars; messenger service for secretary's office, fifty-two dollars; clerical services for managers, one thousand five hundred dollars; agents, two thousand four hundred dollars; for traveling expenses of the Board of Managers, their officers and employees, eleven thousand five hundred dollars; for outdoor relief, one thousand seven hundred and fifty dollars; for rent, medical examinations, stationery, telegrams, and other incidental expenses, two thousand five hundred dollars; in all, thirty-seven thousand eight hundred and forty-six dollars.

Under authority conferred by separate statutes, Branch Homes have been established at the following places:

The Central Branch, at Dayton, Ohio.  
The Northwestern Branch, at Milwaukee, Wis.  
The Eastern Branch, at Togus, Me.  
The Southern Branch, at Hampton, Va.  
The Western Branch, at Leavenworth, Kans.  
The Pacific Branch, at Santa Monica, Cal.  
The Marion Branch, at Marion, Ind.

## ESTABLISHMENT OF BRANCH HOMES.

Sites for homes may be purchased, and buildings erected.

Mar. 21, 1866, c. 21, s. 4, v. 14, p. 10; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.

Sec. 4830, R. S.

**1761.** The Board of Managers shall have authority to procure from time to time, at suitable places, sites for military homes for all persons serving in the Army of the United States at any time in the war of the rebellion, not otherwise provided for, who have been or may be disqualified for procuring their own support by reason of wounds received or sickness contracted while in the line of their duty during the rebellion; and to have the necessary buildings erected, having due regard to the health of location, facility of access, and capacity to accommodate the persons entitled to the benefits thereof.

## ADMISSIONS TO THE HOME.

What persons are entitled to benefit of National Home.

Mar. 21, 1866, c. 21, s. 7, v. 14, p. 11; Feb. 28, 1871, Res. 45, v. 16, p. 599; Jan. 23, 1873, c. 51, s. 1, v. 17, p. 417.

S. 5, July 5, 1884, v. 23, p. 121.

Sec. 4832, R. S.

**1762.** The following persons only shall be entitled to the benefits of the National Home for Disabled Volunteer Soldiers, and may be admitted thereto, upon the recommendation of three of the board of managers, namely: All honorably discharged soldiers and sailors who served in the war of the rebellion, and the volunteer soldiers and sailors of the war of eighteen hundred and twelve and of the Mexican war, who are disabled by age, disease or otherwise, and by reason of such disability are incapable of earning a living, shall be admitted into the Home for Disabled Volunteer Soldiers: *Provided*, such disability was not incurred in service against the United States.<sup>1</sup> *Sec. 5, act of July 5, 1884 (23 Stat. L., 121).*

## STATE AND TERRITORIAL HOMES.

Disabled soldiers and sailors. Aid to State homes for.

Aug. 27, 1888, v. 25, p. 450.

**1763.** That all States or Territories which have established, or which shall hereafter establish, State homes for disabled soldiers and sailors of the United States who served in the war of the rebellion, or in any previous war, who are disabled by age, disease, or otherwise, and by reason of such disability are incapable of earning a living, provided such disability was not incurred in service against the United States, shall be paid for every such

<sup>1</sup>Section 2 of the act of March 2, 1887 (24 Stat. L., 444), authorizing the establishment of a branch home west of the Rocky Mountains, contains a requirement "that all honorably discharged soldiers and sailors who served in the regular and volunteer forces of the United States, and who are disabled by disease, wounds, or otherwise, and who have no adequate means of support, and by reason of such disability are incapable of earning their living, shall be entitled to be admitted to said Home for Disabled Volunteer Soldiers, subject to like regulations as they are now admitted to existing branches of the National Home for Disabled Volunteer Soldiers."

The act of March 2, 1889 (25 Stat. L., 955), authorizes reduced rates to be given, by transportation companies, to inmates of the National Home, "including those about to enter and those returning home after discharge, under arrangements made with the Board of Managers of said homes."

disabled soldier or sailor who may be admitted and cared for in such home at the rate of one hundred dollars per annum. The number of such persons for whose care any State or Territory shall receive the said payment under this act shall be ascertained by the Board of Managers of the National Home for Disabled Volunteer Soldiers, under such regulations as it may prescribe, but the said State or Territorial homes shall be exclusively under the control of the respective State or Territorial authorities, and the Board of Managers shall not have nor assume any management or control of said State or Territorial homes. The Board of Managers of the National Home shall, however, have power to have the said State or Territorial homes inspected at such times as it may consider necessary, and shall report the result of such inspections to Congress in its annual report. *Act of August 27, 1888 (25 Stat. L., 450).*

Board of Managers of National Home to make rules, etc.  
Sec. 4825, R. S.

Inspection

1764. That the sum of two hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to carry out the provisions of this act, and payments to the States or Territories under it shall be made quarterly by the said Board of Managers for the National Home for Disabled Volunteers to the officers of the respective States or Territories entitled, duly authorized to receive such payments, and shall be accounted for as are the appropriations for the support of the National Home for Disabled Volunteer Soldiers. *Sec. 2, act of August 27, 1888 (25 Stat. L., 450).*

Appropriation.  
Sec. 2, Aug. 27,  
1888, v. 25, p. 450.

Payments.

1765. That hereafter no State under this appropriation shall be paid a sum exceeding one-half the cost of maintenance of each soldier or sailor by such State.<sup>1</sup> *Act of March 2, 1889 (25 Stat. L., 975).*

States to pay half.  
Mar. 2, 1889, v.  
25, p. 975.

#### PENSIONS TO INMATES.

1766. All pensions payable, or to be paid under this act, to pensioners who are inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurer or treasurers of said home, upon security given to the satisfaction of the managers, to be disbursed for the benefit of the pensioners without deduction for fines or penalties under regulations to be established by the managers of the home; said payment to be made by the pension agent

Pensioners, inmates of the National Home for Disabled Volunteer Soldiers, how paid.  
Sec. 2, Feb. 26,  
1881, v. 21, p. 350.

<sup>1</sup>Subsequent acts of appropriation contain the requirement "that one-half of any sum or sums retained by State homes on account of pensions received from inmates shall be deducted from the aid herein provided for."

upon a certificate of the proper officer of the home that the pensioner is an inmate thereof and is still living. Any balance of the pension which may remain at the date of the pensioner's discharge shall be paid over to him; and in case of his death at the home, the same shall be paid to the widow or children, or in default of either to his legal representatives.<sup>1</sup> *Sec. 2, act of February 26, 1881 (21 Stat. L., 350).*

#### PENSIONS TO INMATES.

Pensions, etc.,  
due inmates of  
National Home  
to be paid to  
treasurers, etc.  
Aug. 7, 1882, v.  
22, p. 322.

**1767.** That all pensions and arrears of pensions payable or to be paid to pensioners who are or may become inmates of the National Home for Disabled Volunteer Soldiers shall be paid to the treasurers of said home, to be applied by such treasurers as provided by law, under the rules and regulations of said home. Said payments shall be made by the pension agent upon a certificate of the proper officer of the home that the pensioner is an inmate thereof on the day to which said pension is drawn. The treasurers of said home, respectively, shall give security, to the satisfaction of the managers of said home, for the payment and application by them of all arrears of pension and pension-moneys they may receive under the aforesaid provision. And section two of the act entitled "An act making appropriations for the payment of invalid and other pensions of the United States for the fiscal year ending June thirtieth, eighteen hundred and eighty-two, and for deficiencies, and for other purposes," approved February twenty-sixth, eighteen hundred and eighty-one, is hereby revived and continued in force. *Act of August 7, 1882 (22 Stat. L., 322).*

#### OUTDOOR RELIEF.

Outdoor relief.  
R. S. sec. 4833,  
p. 937, amended.  
Aug. 23, 1894, v.  
28, p. 492.

**1768.** The Managers of the National Home for Disabled Volunteer Soldiers are authorized to aid persons who are entitled to its benefits by outdoor relief, in such manner and to such extent as they may deem proper, but such relief shall not exceed the average cost of maintaining an inmate of the Home: *Provided*, That in the event that buildings at any Branch of the Home shall be destroyed by fire or rendered unfit for habitation because of pestilence or by the elements, then and in that event the Board of Managers shall have authority to remove the members of said Branch so afflicted or destroyed to any other Branch not so affected, and to do this, they may use any funds appropriated for the

Use of funds to  
transfer inmates  
in case of fire,  
etc.

<sup>1</sup>For disposition of pension in case of an insane inmate see paragraph 1780 *post*.

Home, notwithstanding they may have been specifically appropriated for other purposes, to the extent that such funds shall be necessary to effect such a transfer and the maintenance and support thereafter of said members so transferred, and shall report their doings therein to the Congress and their expenditures as in other cases of expenditures: *Provided further*, That the appropriations for any fiscal year shall not be exceeded. *Act of August 23, 1894 (28 Stat. L., 492).*

Limit.  
Sec. 4833, R. S.

## MISCELLANEOUS PROVISIONS.

**1769.** All inmates of the National Home for Disabled Volunteer Soldiers shall be subject to the Rules and Articles of War, and in the same manner as if they were in the Army.<sup>1</sup>

Inmates sub-  
ject to Article  
of War.  
Mar. 21, 1866, c.  
21, s. 9, v. 14, p. 11;  
Jan. 23, 1873, c. 51,  
s. 1, v. 17, p. 417. Sec. 4835, R. S.

**1770.** That the Secretary of War be directed to turn over to the managers of the National Home for Disabled Volunteer Soldiers all the old clothing now held for issue to the National Home. Said managers are authorized to estimate for building and maintenance at the Central Branch of a building or buildings for the safe and proper keeping of the insane. *Act of March 3, 1881 (21 Stat. L., 447).*

Building for  
insane.  
Mar. 3, 1881, v.  
21, p. 447.

**1771.** That in addition to the persons now entitled to admission to said hospital, any inmate of the National Home for Disabled Volunteer Soldiers, who is now or may hereafter become insane shall, upon an order of the president of the board of managers of the said National Home, be admitted to said hospital and treated therein; and if any inmate so admitted from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital, and be paid over to the proper officer of said institution for the general uses thereof. *Act of August 7, 1882 (22 Stat. L., 330).*

Insane persons  
from National  
Home for Dis-  
abled Volunteer  
Soldiers to be ad-  
mitted, etc.  
Aug. 7, 1882, v.  
22, p. 330.

**1772.** That the Secretary of War be, and hereby is, authorized and directed, subject to such regulations as he

Obsolete serv-  
iceable cannon.

<sup>1</sup>Section 4835, Revised Statutes, providing that the inmates of the "National Home for Disabled Volunteer Soldiers" shall be "subject to the Rules and Articles of War," held (1870) to be clearly an unconstitutional enactment, such inmates not being, and having never been, any part of the armies of the United States, but *civilians*. The fact that they had once been members of the volunteer forces could not attach to them, after their final discharges, any amenability to the military jurisdiction. In but a single case—that described in Court Martial, II, section 15, *ante*—has an inmate ever been made amenable to trial by court-martial, and, in that case, upon the report of the Judge-Advocate-General, the proceedings were declared to be void *ab initio* and wholly inoperative by the Secretary of War. (Dig. J. A. Gen., p. 744, par. 4.)



May be delivered to Soldiers' Homes. Feb. 8, 1889, v. 25, p. 657.

may prescribe, to deliver to any of the "National Homes for Disabled Volunteer Soldiers" already established or hereafter established and to any of the State Homes for soldiers and sailors or either now or hereafter duly established and maintained under State authority, such obsolete serviceable cannon, bronze or iron, suitable for firing salutes, as may be on hand undisposed of, not exceeding two to any one Home. *Act of February 8, 1889 (25 Stat. L., 657).*

Documents to be furnished. July 26, 1894, v. 28, p. 159.

State homes, etc.

Laws, messages, and Record only to be sent. Sec. 4837, R. S.

1773. That the Secretary of the Senate and the Clerk of the House of Representatives shall cause to be sent to the National Home for Disabled Volunteer Soldiers at Dayton, Ohio, and to the branches at Togus in Maine, Milwaukee in Wisconsin, Hampton in Virginia, Marion in Indiana, Leavenworth in Kansas, Santa Monica in California, and to the homes for the widows and orphans of soldiers and sailors established and maintained by any State or Territory, and all soldiers and sailors' homes established by the authority of any State or Territory receiving aid from the United States under legislation of Congress, each, one copy each of the following documents: The session laws of Congress; the annual messages of the President, with accompanying documents in the abridgment thereof; the daily Congressional Record; and the Public Printer is hereby authorized and directed to furnish to the Secretary of the Senate and the Clerk of the House of Representatives the documents referred to in this section. *Act of July 26, 1894 (28 Stat. L., 159).*

Mail matter to be sent free. V. 19, p. 335. Aug. 18, 1894, v. 28, p. 412.

1774. That the provisions of the fifth and sixth sections of the Act entitled "An Act establishing post-routes, and for other purposes, approved March third, eighteen hundred and seventy-seven," for the transmission of official mail-matter, be, and they are hereby, extended and made applicable to all official mail-matter of the National Home for Disabled Volunteer Soldiers. *Act of August 18, 1894 (28 Stat. L., 412).*

## CHAPTER XLII.

### THE GOVERNMENT HOSPITAL FOR THE INSANE.

Par.	Par.
1775. Establishment of the Government Hospital for the Insane.	1778. Discharge of patients upon bond.
1776. The superintendent.	1779. Disbursement of appropriations for the insane.
1777. Admission of insane persons of the Army, Navy, Marine Corps, etc.	1780. Payment of pensions to inmates.

1775. There shall be in the District of Columbia a Government Hospital for the Insane, and its objects shall be the most humane care and enlightened curative treatment of the insane of the Army and Navy of the United States and of the District of Columbia.

Establishment of the Government Hospital for the Insane. Mar. 3, 1855, c. 199, s. 1, v. 10, p. 682. Sec. 4838, R. S.

1776. The chief executive officer of the Hospital for the Insane shall be a superintendent, who shall be appointed by the Secretary of the Interior, and shall be entitled to a salary of four thousand dollars a year, and shall give bond for the faithful performance of his duties, in such sum and with such securities as may be required by the Secretary of the Interior. The superintendent shall be a well-educated physician, possessing competent experience in the care and treatment of the insane; he shall reside on the premises, and devote his whole time to the welfare of the institution; he shall, subject to the approval of the visitors, engage and discharge all needful and usual employes in the care of the insane, and all laborers on the farm, and determine their wages and duties; he shall be the responsible disbursing agent of the institution, and shall be ex-officio secretary of the board of visitors.

The superintendent. Sec. 3, *ibid.* Mar. 3, 1881, v. 21, p. 414. Sec. 4839, R. S.

1777. The superintendent, upon the order of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Treasury, respectively, shall receive, and keep in custody until they are cured, or removed by the same authority which ordered their reception, insane persons of the following descriptions: pp. 93, 94; Mar. 3, 1875, c. 156, s. 5, v. 18, p. 486.

Admission of insane persons of the Army, Navy, Marine Corps, etc. June 15, 1860, c. 66, s. 1, v. 12, p. 23; July 13, 1866, c. 179, ss. 1, 2, v. 14, Sec. 4843, R. S.

First. Insane persons belonging to the Army, Navy, Marine Corps, and revenue-cutter service.

Second. Civilians employed in the Quartermaster's and Subsistence Departments of the Army who may be, or may hereafter become, insane while in such employment.

Third. Men who, while in the service of the United States, in the Army, Navy, or Marine Corps, have been admitted to the hospital, and have been thereafter discharged from it on the supposition that they have recovered their reason, and have, within three years after such discharge, become again insane from causes existing at the time of such discharge, and have no adequate means of support.

Fourth. Indigent insane persons who have been in either of the said services and been discharged therefrom on account of disability arising from such insanity.

Fifth. Indigent insane persons who have become insane within three years after their discharge from such service, from causes which arose during and were produced by said service.<sup>1</sup>

Discharge of patients upon bond.

Sec. 9, *ibid.*

Sec. 4856, R. S.

1778. If any person will give bond with sufficient security, to be approved by the supreme court of the District of Columbia, or by any judge thereof in vacation, payable to the United States, with condition to restrain and take care of any independent or indigent insane person not charged with a breach of the peace, whether in the hospital or not, until the insane person is restored to sanity, such court or judge thereof may deliver such insane person to the party giving such bond.

Disbursement of appropriations for the insane.

Mar. 3, 1855, c.

199, s. 7, v. 10, p. 683.

Sec. 4858, R. S.

1779. All appropriations of money by Congress for the support of the Hospital for the Insane shall be drawn from the Treasury on the requisition of the Secretary of the Interior, and shall be disbursed and accounted for in all respects according to the laws regulating ordinary disbursements of public money.<sup>2</sup>

Payment of pensions to inmates.

Aug. 7, 1882, v. 22, p. 330.

1780. If any inmate of the Government Hospital for the Insane so admitted<sup>3</sup> from said National Home is or thereafter becomes a pensioner, and has neither wife, minor child, nor parent dependent on him, in whole or in part, for support, his arrears of pension and his pension money accruing during the period he shall remain in said hospital shall be applied to his support in said hospital and be paid over to the proper officer of said institution for the general uses thereof. *Act of August 7, 1882 (22 Stat. L., 330).*

<sup>1</sup> The right to admission to the Asylum has been extended by statute to include the following classes of cases:

(1) To insane convicts serving sentences of confinement imposed by United States courts. Act of June 23, 1874 (18 Stat. L., 251).

(2) To persons in custody charged with crime against the United States. Act of August 7, 1882 (22 Stat. L., 202).

(3) To inmates of the several branches of the National Home for Disabled Volunteer Soldiers who may become insane. Act of August 7, 1882 (22 Stat. L., 302).

(4) To inmates of the Soldiers' Home who may become insane. Act of July 7, 1884 (23 Stat. L., 194). The expense of maintenance to be paid from the Soldiers' Home Fund.

<sup>2</sup> The act of March 3, 1881 (21 Stat. L., 458), vests the supervision of the Asylum and the control over its management in the Secretary of the Interior.

<sup>3</sup> In accordance with the act of August 7, 1882. See note 1, *supra*.

## CHAPTER XLIII.

### NATIONAL PARKS.

Par.	Par.
1781, 1782. General provisions.	1825-1829. The Antietam battle-field.
1783-1799. The Chickamauga and Chattanooga National Military Park.	1830-1855. The Yellowstone National Park.
1790-1814. The Gettysburg National Park.	1856-1858. Forest reservations.
1815-1824. The Shiloh National Military Park.	

### NATIONAL MILITARY PARKS.

**1781.** That in order to obtain practical benefits of great value to the country from the establishment of national military parks, said parks and their approaches are hereby declared to be national fields for military maneuvers for the Regular Army of the United States and the National Guard or Militia of the States: *Provided*, That the said parks shall be opened for such purposes only in the discretion of the Secretary of War, and under such regulations as he may prescribe. *Act of May 15, 1896 (29 Stat. L., 120).*

Use of national military parks for maneuvers.  
May 15, 1896, v. 29, p. 120.

**1782.** That the Secretary of War is hereby authorized, within the limits of appropriations which may from time to time be available for such purpose, to assemble, at his discretion, in camp at such season of the year and for such period as he may designate, at such field of military maneuvers, such portions of the military forces of the United States as he may think best, to receive military instruction there. The Secretary of War is further authorized to make and publish regulations governing the assembling of the National Guard or Militia of the several States upon the maneuvering grounds, and he may detail instructors from the Regular Army for such forces during their exercises. *Sec. 2, ibid.*

Secretary of War to designate forces to be instructed.  
Sec. 2, *ibid.*

THE CHICKAMAUGA AND CHATTANOOGA NATIONAL  
MILITARY PARK.

Chickamauga  
and Chattanooga  
National Military  
Park estab-  
lished.

Purpose.  
Conditions.  
Jurisdiction.

Highways de-  
clared ap-  
proaches to and  
parts of park.

Aug. 19, 1890, v.  
26, p. 333.

**1783.** That for the purpose of preserving and suitably marking for historical and professional military study the fields of some of the most remarkable maneuvers and most brilliant fighting in the war of the rebellion, and upon the ceding of jurisdiction to the United States by the States of Tennessee and Georgia, respectively, and the report of the Attorney-General of the United States that the title to the lands thus ceded is perfect, the following described highways in those States are hereby declared to be approaches to and parts of the Chickamauga and Chattanooga National Military Park as established by the second section of this act, to wit: First. The Missionary Ridge Crest road from Sherman Heights at the north end of Missionary Ridge, in Tennessee, where the said road enters upon the ground occupied by the Army of the Tennessee under Major-General William T. Sherman, in the military operations of November twenty-fourth and twenty-fifth, eighteen hundred and sixty-three; thence along said road through the positions occupied by the army of General Braxton Bragg on November twenty-fifth, eighteen hundred and sixty-three, and which were assaulted by the Army of the Cumberland under Major-General George H. Thomas on that date, to where the said road crosses the southern boundary of the State of Tennessee, near Rossville Gap, Georgia, upon the ground occupied by the troops of Major-General Joseph Hooker, from the Army of the Potomac, and thence in the State of Georgia to the junction of said road with the Chattanooga and Lafayette or State road at Rossville Gap; second, the Lafayette or State road from Rossville, Georgia, to Lee and Gordon's Mills, Georgia; third, the road from Lee and Gordon's Mills, Georgia, to Crawfish Springs, Georgia; fourth, the road from Crawfish Springs, Georgia, to the crossing of the Chickamauga at Glass' Mills, Georgia; fifth, the Dry Valley road from Rossville, Georgia, to the southern limits of McFarland's Gap in Missionary Ridge; sixth, the Dry Valley and Crawfish Springs road from McFarland's Gap to the intersection of the road from Crawfish Springs to Lee and Gordon's Mills; seventh, the road from Ringold, Georgia, to Reed's Bridge on the Chickamauga River; eighth, the roads from the crossing of Lookout Creek across the northern slope of Lookout Mountain and thence to the old Summertown Road and to the valley on the east slope of the

said mountain, and thence by the route of General Joseph Hooker's troops to Rossville, Georgia, and each and all of these herein described roads shall, after the passage of this act, remain open as free public highways, and all rights of way now existing through the grounds of the said park and its approaches shall be continued. *Sec. 1, act of August 19, 1890 (26 Stat. L., 333).*

Rights of way.

**1784.** That upon the ceding of jurisdiction by the legislature of the State of Georgia, and the report of the Attorney-General of the United States that a perfect title has been secured under the provisions of the act approved August first, eighteen hundred and eighty-eight, entitled "An act to authorize condemnation of land for sites of public buildings, and for other purposes," the lands and roads embraced in the area bounded as herein described, together with the roads described in section one of this act, are hereby declared to be a national park, to be known as the Chickamauga and Chattanooga National Park; that is to say, the area inclosed by a line beginning on the Lafayette or State road, in Georgia, at a point where the bottom of the ravine next north of the house known on the field of Chickamauga as the Cloud House, and being about six hundred yards north of said house, due east to the Chickamauga River and due west to the intersection of the Dry Valley road at McFarland's Gap; thence along the west side of the Dry Valley and Crawfish Springs roads to the south side of the road from Crawfish Springs to Lee and Gordon's Mills; thence along the south side of the last-named road to Lee and Gordon's Mills; thence along the channel of the Chickamauga River to the line forming the northern boundary of the park, as hereinbefore described, containing seven thousand six hundred acres, more or less. *Sec. 2, ibid.*

Condemnation  
of lands and  
roads.  
*Sec. 2, ibid.*

Name, etc.

**1785.** That the said Chickamauga and Chattanooga National Park, and the approaches thereto, shall be under the control of the Secretary of War, and it shall be his duty, immediately after the passage of this act, to notify the Attorney-General of the purpose of the United States to acquire title to the roads and lands described in the previous sections of this act under the provisions of the act of August first, eighteen hundred and eighty-eight; and the said Secretary, upon receiving notice from the Attorney-General of the United States that perfect titles have been secured to the said lands and roads, shall at once proceed to establish and substantially mark the boundaries of the said park. *Sec. 3, ibid.*

Park and ap-  
proaches to be  
under control of  
Secretary of  
War.

Proceedings in  
condemnation.  
*Sec. 3, ibid.*

Agreements with present land owners to remain, etc.  
Sec. 4, *ibid.*

Conditions of occupancy.

Park commissioners.  
Sec. 5, *ibid.*

Secretary of Commission.

Office.

Duties of commission.  
Sec. 6, *ibid.*

Employment of historical assistant.

1783. That the Secretary of War is hereby authorized to enter into agreements, upon such nominal terms as he may prescribe, with such present owners of the land as may desire to remain upon it, to occupy and cultivate their present holdings, upon condition that they will preserve the present buildings and roads, and the present outlines of field and forest, and that they will only cut trees or underbrush under such regulations as the Secretary may prescribe, and that they will assist in caring for and protecting all tablets, monuments, or such other artificial works as may from time to time be erected by proper authority. *Sec. 4, ibid.*

1787. That the affairs of the Chickamauga and Chattanooga National Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, each of whom shall have actively participated in the battle of Chickamauga or one of the battles about Chattanooga, two to be appointed from civil life by the Secretary of War, and a third, who shall be detailed by the Secretary of War from among those officers of the Army best acquainted with the details of the battles of Chickamauga and Chattanooga, who shall act as Secretary of the Commission. The said commissioners and Secretary shall have an office in the War Department building, and while on actual duty shall be paid such compensation, out of the appropriation provided in this act, as the Secretary of War shall deem reasonable and just. *Sec. 5, ibid.*

1788. That it shall be the duty of the commissioners named in the preceding section, under the direction of the Secretary of War, to superintend the opening of such roads as may be necessary to the purposes of the park, and the repair of the roads of the same, and to ascertain and definitely mark the lines of battle of all troops engaged in the battles of Chickamauga and Chattanooga, so far as the same shall fall within the lines of the park as defined in the previous sections of this act, and, for the purpose of assisting them in their duties and in ascertaining these lines, the Secretary of War shall have authority to employ, at such compensation as he may deem reasonable and just, to be paid out of the appropriation made by this act, some person recognized as well informed in regard to the details of the battles of Chickamauga and Chattanooga, and who shall have actively participated in one of those battles, and it shall be the duty of the Secretary of War from and after the passage of this act, through the commissioners, and

their assistant in historical work, and under the act approved August first, eighteen hundred and eighty-eight, regulating the condemnation of land for public uses, to proceed with the preliminary work of establishing the park and its approaches as the same are defined in this act, and the expenses thus incurred shall be paid out of the appropriation provided by this act.<sup>1</sup> *Sec. 6, ibid.*

V. 25, p. 357.

1789. That it shall be the duty of the commissioners, acting under the direction of the Secretary of War, to ascertain and substantially mark the locations of the regular troops, both infantry and artillery, within the boundaries of the park, and to erect monuments upon those positions as Congress may provide the necessary appropriations; and the Secretary of War in the same way may ascertain and mark all lines of battle within the boundaries of the park and erect plain and substantial historical tablets at such points in the vicinity of the Park and its approaches as he may deem fitting and necessary to clearly designate positions and movements, which, although within the limits of the Park, were directly connected with the battles of Chickamauga and Chattanooga. *Sec. 7, ibid.*

Location of regular troops.  
*Sec. 7, ibid.*

Lines of battle.  
Erection of historical tablets.

1790. That it shall be lawful for the authorities of any State having troops engaged either at Chattanooga or Chickamauga, and for the officers and directors of the Chickamauga Memorial Association, a corporation chartered under the laws of Georgia, to enter upon the lands and approaches of the Chickamauga and Chattanooga National Park for the purpose of ascertaining and marking the lines of battle of troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them by monuments, tablets, or otherwise shall be submitted to the Secretary of War, and shall first receive the written approval of the Secretary, which approval shall be based upon formal written reports, which must be made to him in each case by the commissioners of the park. *Sec. 8, ibid.*

Certain States, etc., may ascertain and mark lines of battle, etc.  
*Sec. 8, ibid.*

Secretary of War to first approve lines, etc.

1791. That the Secretary of War, subject to the approval of the President of the United States, shall have the power to make, and shall make, all needed regulations for the care of the park and for the establishment and marking of the lines of battle and other historical features of the park. *Sec. 9, ibid.*

Care of park, etc.  
*Sec. 9, ibid.*

Regulations, etc.

<sup>1</sup>All vouchers in support of disbursements under the act of August 19, 1890 (26 Stat. L., 333), providing for the Chickamauga and Chattanooga National Park, and acts supplementary thereto, require the approval of the Secretary of War. (3 Compt. Dec., 381.)



Punishment  
for injury, etc.,  
to monuments,  
etc.

Sec. 10, *ibid.*

**1792.** That if any person shall willfully destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structure, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall willfully destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall willfully destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon such park, except by permission of the Secretary of War, or shall willfully remove or destroy any breast-works, earth-works, walls, or other defenses or shelter, on any part thereof, constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half to the use of the park and the other half to the informer, to be enforced and recovered, before such justice, in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. *Sec. 10, ibid.*

Appropriation  
for preliminary  
work and pay,  
etc., of commis-  
sion, etc.

Sec. 11, *ibid.*

**1793.** That to enable the Secretary of War to begin to carry out the purposes of this act, including the condemnation and purchase of the necessary land, marking the boundaries of the park, opening or repairing necessary roads, maps and surveys, and the pay and expenses of the commissioners and their assistant, the sum of one hundred and twenty-five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, and disbursements under this act shall require the approval of the Secretary of War, and he shall make annual report of the same to Congress. *Sec. 11, act of August 1, 1890 (26 Stat. L., 333).*

Reduced area.  
Mar. 3, 1891, v.  
26, p. 978.

**1794.** That the Secretary of War, upon the recommendation of the Chickamauga Park Commissioners, may confine the limits of the park to such reduced area, within the bounds fixed by the said act, as may be sufficient for the purposes of the said act, and the acquisition of title for the United States to such reduced area shall be held to be a compliance with the terms of said act, and such title

shall be procured by the Secretary of War and under his direction in accordance with the methods prescribed in sections four, five, and six of the act approved February twenty-second, eighteen hundred and sixty seven, entitled "An act to establish and protect national cemeteries," which procurement of title shall be held to be a compliance with the act establishing the said Park, and the Secretary of War shall proceed with the establishment of the park as rapidly as jurisdiction over the roads of the park and its approaches and title to the separate parcels of land which compose it may be obtained from the United States. *Act of March 3, 1891 (26 Stat. L., 978).*

**1795.** To enable the Secretary of War to complete the establishment of the Chickamauga and Chattanooga National Military Park according to the terms of existing laws, including surveys, maps, models in relief, the purchase of Orchard Knob and Sherman's Earthworks, and for observation towers and the purchase of sites for two of them, one hundred and fifty thousand dollars: *Provided*, That the Secretary of War may lease the lands of the park at his discretion, either to former owners or other persons, for agricultural purposes, the proceeds to be applied by the Secretary of War to the repairs of roads and the care of the park; and from this appropriation the Secretary of War is authorized to pay the disbursing officer of the War Department the sum of five hundred dollars for disbursing this and former appropriations for said Park. Lease of lands.  
Aug. 5, 1892, v.  
27, p. 376.

That the Secretary of War and the Secretary of the Navy are hereby authorized to deliver to the Commissioners of the Chickamauga and Chattanooga National Military Park, at the park, such number of condemned cannon and cannon balls as their judgment may approve, for the purpose of their work of indication and marking location on the battlefields of Chickamauga, Missionary Ridge and Lookout Mountain. *Act of August 5, 1892 (27 Stat. L., 376).* Donation of  
condemned can-  
non, etc.  
Mar. 3, 1893, v.  
27, p. 598.

**1796.** To enable the Secretary of War to complete the establishment of the Chickamauga and Chattanooga National Military Park, according to the terms of existing laws, including the construction of roads, surveys, maps, iron gun carriages, administration building, the purchase of land within the legal area of the park and the north point of Lookout Mountain, and for widening roads, for bronze historical tablets, repairs to bridges, one observation tower on Orchard Knob; \* \* \* in all, one hundred thousand dollars. And the Secretary of War is hereby authorized to accept on behalf of the United States donations of land for road purposes. *Act of March 3, 1893 (27 Stat. L., 376).* Donations of  
land.  
Mar. 3, 1893, v.  
27, p. 376.

Continuation of  
work.

Aug. 18, 1894, v.  
28, p. 403.

Purchase of  
sites.

The same.  
Mar. 2, 1895, v.  
28, p. 945.

Use of material  
for State monu-  
ments author-  
ized.

J. R. 8, Oct. 2,  
1893, v. 28, p. 12.

Restriction on  
erection of mon-  
uments.

Feb. 26, 1896, v.  
29, p. 21.

Gettysburg Na-  
tional Park.

Acceptance of  
land from Battle-  
field Memorial  
Association.

Feb. 11, 1895, v.  
28, p. 651.

**1797.** To \* \* \* complete the establishment of the park, \* \* \* including road construction, \* \* \* foundations for State monuments, the purchase of the north end of Missionary Ridge, and monument sites in the vicinity of Glass's Mill, \* \* \* in all, seventy-five thousand dollars. *Act of August 18, 1894 (28 Stat. L., 403).*

**1798.** To \* \* \* complete the establishment of the \* \* \* park, \* \* \* including road work, memorial gateway and designs therefor, \* \* \* land the purchase of which has heretofore been authorized by law, sites for monuments in Lookout Valley, not to exceed three hundred dollars in all; in all, seventy-five thousand dollars. *Act of March 2, 1895 (28 Stat. L., 945).* That the said Board of Commissioners heretofore appointed pursuant to the statute creating said park, is hereby empowered to authorize the boards or representatives of the several States building monuments upon said battlefield, to take and use, under such rules and regulations, and upon such terms as said National Commission may direct, such stone and other material, including sand and gravel, as may be necessary to construct the foundation for any such monuments, and which may be found within the territory of said National Park, and the roads and highways leading thereto. *Joint resolution No. 8, October 2, 1893 (28 Stat. L., 12).*

**1799.** That no monuments or memorials shall be erected upon any lands of the park, or remain upon any lands which may be purchased for the park, except upon ground actually occupied in the course of the battle by troops of the State which the proposed monuments are intended to commemorate, except upon those sections of the park set apart for memorials to troops which were engaged in the campaigns, but operated outside of the legal limits of the park; and the regulations of the commissioners of the park, as approved by the Secretary of War, promulgated December fourteenth, eighteen hundred and ninety-five, are hereby affirmed. *Act of February 26, 1896 (29 Stat. L., 21).*

#### THE GETTYSBURG NATIONAL PARK AT GETTYSBURG, PA.

**1800.** That the Secretary of War is hereby authorized to receive from the Gettysburg Battlefield Memorial Association, a corporation chartered by the State of Pennsylvania, a deed of conveyance to the United States of all the lands belonging to said association, embracing about eight hundred acres, more or less, and being a considerable part of the battlefield of Gettysburg, together with all rights

of way over avenues through said lands acquired by said association, and all improvements made by it in and upon the same. Upon the due execution and delivery to the Secretary of War of such deed of conveyance, the Secretary of War is authorized to pay to the said Battlefield Memorial Association the sum of two thousand dollars, or so much thereof as may be necessary to discharge the debts of said association, the amount of such debts to be verified by the officers thereof, and the sum of two thousand dollars is hereby appropriated out of any money in the Treasury not otherwise appropriated to meet and defray such charges. *Act of February 11, 1895 (28 Stat. L., 651).*

**1801.** That as soon as the lands aforesaid shall be conveyed to the United States the Secretary of War shall take possession of the same, and such other lands on the battlefield as the United States have acquired, or shall hereafter acquire, by purchase or condemnation proceedings; and the lands aforesaid, shall be designated and known as the "Gettysburg National Park." *Sec. 2, ibid.*

Designation.  
*Sec. 2, ibid.*

**1802.** That the Gettysburg national park shall, subject to the supervision and direction of the Secretary of War, be in charge of the commissioners heretofore appointed by the Secretary of War for the location and acquisition of lands at Gettysburg, and their successors; the said commissioners shall have their office at Gettysburg, and while on duty shall be paid such compensation out of the appropriation provided in this act as the Secretary of War shall deem reasonable and just. And it shall be the duty of the said commissioners, under the direction of the Secretary of War, to superintend the opening of such additional roads as may be necessary for the purposes of the park and for the improvement of the avenues heretofore laid out therein, and to properly mark the boundaries of the said park, and to ascertain and definitely mark the lines of battle of all troops engaged in the battle of Gettysburg, so far as the same shall fall within the limits of the park.<sup>1</sup> *Sec. 3, ibid.*

Commissioners.  
*Sec. 3, ibid.*

Compensation.

Duty.

**1803.** That the Secretary of War is hereby authorized and directed to acquire, at such times and in such manner as he may deem best calculated to serve the public interest, such lands in the vicinity of Gettysburg, Pennsylvania, not exceeding in area the parcels shown on the map pre-

Acquiring additional land, etc.  
*Sec. 4, ibid.*

<sup>1</sup> Where certain land, part of the battlefield of Gettysburg, was in danger of being so cut up and altered by the construction of an electric railroad as to cause the obliteration of important tactical positions occupied by the different commands engaged in the battle, *advised* that the Attorney-General be requested to have initiated the proper proceedings for the condemnation of the land so that the United States may acquire the fee, and for an injunction restraining the railroad company from constructing or operating its road upon the land pending the condemnation proceedings. (Dig. Opin. J. A. Gen., 466, par. 3.)

pared by Major-General Daniel E. Sickles, United States Army, and now on file in the office of the Secretary of War, which were occupied by the infantry, cavalry, and artillery on the first, second and third days of July, eighteen hundred and sixty-three, and such other adjacent lands as he may deem necessary to preserve the important topographical features of the battlefield: *Provided*, That nothing contained in this Act shall be deemed and held to prejudice the rights acquired by any State or by any military organization to the ground on which its monuments or markers are placed, nor the right of way to the same. *Sec. 4, ibid.*

Commissioners  
to acquire lands  
designated.  
*Sec. 5, ibid.*

**1804.** That for the purpose of acquiring the lands designated and described in the foregoing section not already acquired and owned by the United States, and such other adjacent land as may be deemed necessary by the Secretary of War for the preservation and marking of the lines of battle of the Union and Confederate armies at Gettysburg, the Secretary of War is authorized to employ the services of the commissioners heretofore appointed by him for the location, who shall proceed, in conformity with his instructions and subject in all things to his approval, to acquire such lands by purchase, or by condemnation proceedings, to be taken by the Attorney-General in behalf of the United States, in any case in which it shall be ascertained that the same can not be purchased at prices deemed reasonable and just by the said commissioners and approved by the Secretary of War. And such condemnation proceedings may be taken pursuant to the Act of Congress approved August first, eighteen hundred and eighty-eight, regulating the condemnation of land for public uses, or the Joint Resolution authorizing the purchase or condemnation of land in the vicinity of Gettysburg, Pennsylvania, approved June fifth, eighteen hundred and ninety-four. *Sec. 5, ibid.*

Condemnation  
proceedings.  
V. 25, p. 357.

Regulations,  
etc.  
*Sec. 6, ibid.*

**1805.** That it shall be the duty of the Secretary of War to establish and enforce proper regulations for the custody, preservation, and care of the monuments now erected or which may be hereafter erected within the limits of the said national military park; and such rules shall provide for convenient access by visitors to all such monuments within the park, and the ground included therein, on such days and within such hours as may be designated and authorized by the Secretary of War. *Sec. 6, ibid.*

Penalty for de-  
stroying col-  
umns, etc.  
*Sec. 7, ibid.*

**1806.** That if any person shall destroy, mutilate, deface, injure, or remove, except by permission of the Secretary of War, any column, statue, memorial structure, or work of

art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees, growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter or any part thereof constructed by the armies formerly engaged in the battles on the land or approaches to the park, or shall violate any regulation made and published by the Secretary of War for the government of visitors within the limits of said park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed, shall, for each and every such offense, forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than five hundred dollars, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the county where the offense may be committed. *Sec. 7, ibid.*

1807. That the Secretary of War is hereby authorized and directed to cause to be made a suitable bronze tablet, containing on it the address delivered by Abraham Lincoln, President of the United States, at Gettysburg on the nineteenth day of November, eighteen hundred and sixty-three, on the occasion of the dedication of the national cemetery at that place, and such tablet, having on it besides the address a medallion likeness of President Lincoln, shall be erected on the most suitable site within the limits of said park, which said address was in the following words, to wit:

"Four score and seven years ago our fathers brought forth on this continent a new nation, conceived in liberty and dedicated to the proposition that all men are created equal.

"Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battlefield of that war. We have come to dedicate a portion of that field as a final resting place for those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

Bronze tablet  
containing Lin  
coln's address,  
etc.

*Sec. 8, ibid.*

Medallion.

Inscription.

"But, in a larger sense, we can not dedicate, we can not consecrate, we can not hallow this ground. The brave men, living and dead, who struggled here, have consecrated it far above our poor power to add or detract. The world will little note, nor long remember, what we say here; but it can never forget what they did here. It is for us, the living, rather to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us; that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion; that we here highly resolve that these dead shall not have died in vain; that this nation, under God, shall have a new birth of freedom, and that government of the people, by the people, for the people, shall not perish from the earth."

And the sum of five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to pay the cost of said tablet and medallion and pedestal. *Sec. 8, ibid.*

Appropriation  
for expenses, etc.  
*Sec. 9, ibid.*

**1808.** That, to enable the Secretary of War to carry out the purposes of this Act, including the purchase or condemnation of the land described in sections four and five of this Act, opening, improving, and repairing necessary roads and avenues, providing surveys and maps, \* \* \* seventy-five thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated; and all disbursements made under this Act shall require the approval of the Secretary of War, who shall make annual report of the same to Congress.<sup>1</sup> *Sec. 9, ibid.*

Monuments,  
etc., Gettysburg.  
Mar. 3, 1887, v.  
24, p. 535.

**1809.** For the erection of monuments or memorial tablets for the proper marking of the position of each of the commands of the Regular Army engaged at Gettysburg, fifteen thousand dollars, to be expended under the direction of the Secretary of War. *Act of March 3, 1887 (24 Stat. L., 535).*

The same.  
Oct. 2, 1888, v.  
25, p. 538.

**1810.** That the appropriation of fifteen thousand dollars, made by the act approved March third, eighteen hundred and eighty-seven, for the erection of monuments or memorial tablets for the proper marking of the position of each of the commands of the regular Army

<sup>1</sup> Joint Resolution No. 30, June 5, 1894 (28 Stat. L., 584), authorizes the acquisition of lands at Gettysburg by condemnation, under the act of August 1, 1888 (25 Stat. L., 357.)

engaged at Gettysburg, be, and the same is hereby, made available for the purchase of land upon which to erect the monuments and tablets. *Act of October 2, 1888 (25 Stat. L., 538).*

1811. For the purpose of preserving the lines of battle at Gettysburg, Pennsylvania, and for properly marking with tablets the positions occupied by the various commands of the armies of the Potomac and of Northern Virginia on that field, and for opening and improving avenues along the positions occupied by troops upon those lines, and for fencing the same, and for determining the leading tactical positions of batteries, regiments, brigades, divisions, corps, and other organizations with reference to the study and correct understanding of the battle, and to mark the same with suitable tablets, each bearing a brief historical legend, compiled without praise and without censure, the sum of twenty-five thousand dollars, to be expended under the direction of the Secretary of War.<sup>1</sup> *Act of March 3, 1893 (27 Stat. L., 599).*

Monuments and tablets at Gettysburg, Pa.

Avenues, etc. Mar. 3, 1893, v. 27, p. 599.

1812. That the Secretary of War is hereby authorized and directed to deliver to the Gettysburg Battlefield Memorial Association, at Gettysburg, Pennsylvania, specimens of the arms, equipments, projectiles, uniforms, and other material of war used by the armies in that battle (so far as may be practicable), for the purpose of exhibiting and preserving them for historical purposes in the museum at the house used by Major-General Meade for headquarters, now owned by the said association, or at such other place as the directors of the association may deem proper. And that the transportation to Gettysburg be furnished by the Quartermaster's Department of the United States from the appropriation for the transportation of army supplies. *Act of July 27, 1892 (27 Stat. L., 276).*

Specimens of arms, etc., used in battle to be furnished. July 27, 1892, v. 27, p. 276.

1813. That the Secretary of War is hereby authorized in his discretion to improve and maintain the public roads within the limits of the national park at Gettysburg, Pennsylvania, over which jurisdiction has been or may hereafter be ceded to the United States: *Provided*, That nothing contained in this Act shall be deemed and held to prejudice the rights acquired by any State or by any military organization to the ground on which its monuments or markers are placed nor the right of way to the same. *Act of June 10, 1896 (29 Stat. L., 384).*

Roads, etc. June 10, 1896, v. 29, p. 384.

<sup>1</sup>This statute was held to be constitutional and within the power of Congress by the decision of the Supreme Court of the United States in the case of the United States v. The Gettysburg Electric Railway Company (160 U. S., 668).



Continuing  
surveys, etc.

Aug. 18, 1894, v.  
28, p. 405.

**1814.** For continuing the work of surveying, locating, and preserving the lines of battle at Gettysburg, Pennsylvania, and for purchasing, opening, constructing, and improving avenues along the portions occupied by the various commands of the armies of the Potomac and Northern Virginia on that field, and for fencing the same; and for the purchase, at private sale or by condemnation, of such parcels of land as the Secretary of War may deem necessary for the sites of tablets, and for the construction of the said avenues; for determining the leading tactical positions and properly marking the same with tablets of batteries, regiments, brigades, divisions, corps, and other organizations with reference to the study and correct understanding of the battle, each tablet bearing a brief historical legend, compiled without praise and without censure; fifty thousand dollars, to be expended under the direction of the Secretary of War.<sup>1</sup> *Act of August 18, 1894 (28 Stat. L., 405).*

#### THE SHILOH NATIONAL MILITARY PARK AT SHILOH, TENN.

Shiloh National  
Military Park es-  
tablished.

Dec. 27, 1894, v.  
28, p. 597.

**1815.** That in order that the armies of the southwest which served in the civil war, like their comrades of the eastern armies at Gettysburg and those of the central west at Chickamauga, may have the history of one of their memorable battles preserved on the ground where they fought, the battlefield of Shiloh, in the State of Tennessee, is hereby declared to be a national military park, whenever title to the same shall have been acquired by the United States and the usual jurisdiction over the lands and roads of the same shall have been granted to the United States by the State of Tennessee; that is to say, the area inclosed by the following lines, or so much thereof as the commissioners of the park may deem necessary, to wit: Beginning at low-water mark on the north bank of Snake Creek where it empties into the Tennessee River; thence westwardly in a straight line to the point where the river road

<sup>1</sup> The appropriations for the Gettysburg National Park, made in the acts of August 18, 1894, and February 11, 1895, to the extent that they provide for objects common to both, are cumulative, while each is available for certain objects not provided for in the other. (2 Compt. Dec., 59.)

The act of June 9, 1880 (21 Stat. L., 170), contained the following provision: "That the sum of fifty thousand dollars, or so much thereof as may be necessary, is hereby appropriated, out of any money in the Treasury not otherwise appropriated, to complete the survey of the Gettysburg battle-field; also, to provide for the compilation of all available data used in locating troops on the engineer maps of that battle; also, to provide diagrams showing the changing movements and positions during the engagement; the whole to be done by or under the direction of Mr. John B. Bachelder, author of the position plates of the Government maps of that battle, under the direction of the Secretary of War: *Provided*, That no part of said sum shall be disbursed by the Secretary of War except for work actually performed or for materials furnished for the objects heretofore named; and that all the maps, data, and materials prepared for, or used for, the work contemplated by this act shall be the property of the Government, to be deposited in the Department of War: *And provided further*, That the sum hereby appropriated shall be in full satisfaction for all work done and all material collected by the said John B. Bachelder."

to Crumps Landing, Tennessee, crosses Snake Creek; thence along the channel of Snake Creek to Owl Creek; thence along the channel of Owl Creek to the crossing of the road to Purdy, Tennessee; thence southwardly in a straight line to the intersection of an east and west line drawn from the point where the road to Hamburg, Tennessee, crosses Lick Creek, near the mouth of the latter; thence eastward along the said east and west line to the point where the Hamburg Road crosses Lick Creek; thence along the channel of Lick Creek to the Tennessee River; thence along low-water mark of the Tennessee River to the point of beginning, containing three thousand acres, more or less, and the area thus inclosed shall be known as the Shiloh National Military Park: *Provided*, That the boundaries of the land authorized to be acquired may be changed by the said commissioners. *Sec. 1, act of December 27, 1894 (28 Stat. L., 597).*

1816. That the establishment of the Shiloh National Military Park shall be carried forward under the control and direction of the Secretary of War, who, upon the passage of this Act, shall proceed to acquire title to the same either under the Act approved August first, eighteen hundred and eighty-eight, entitled "An Act to authorize the condemnation of land for sites of public buildings, and for other purposes," or under the Act approved February twenty-seventh, eighteen hundred and sixty-seven, entitled "An Act to establish and protect national cemeteries," as he may select, and as title is procured to any portion of the lands and roads within the legal boundaries of the park he may proceed with the establishment of the park upon such portions as may thus be acquired. *Sec. 2, ibid.*

Secretary of War to acquire land, etc.  
*Sec. 2, ibid.*

1817. That the Secretary of War is hereby authorized to enter into agreements whereby he may lease, upon such terms as he may prescribe, with such present owners or tenants of the lands as may desire to remain upon it, to occupy and cultivate their present holdings upon condition that they will preserve the present buildings and roads and the present outlines of field and forest, and that they only will cut trees or underbrush under such regulations as the Secretary may prescribe, and that they will assist in caring for and protecting all tablets, monuments, or such other artificial works as may from time to time be erected by proper authority. *Sec. 3, ibid.*

Leases, etc., authorized.  
*Sec. 3, ibid.*

1818. That the affairs of the Shiloh National Military Park shall, subject to the supervision and direction of the Secretary of War, be in charge of three commissioners, to be appointed by the Secretary of War, each of whom shall

Commissioners.  
*Sec. 4, ibid.*

have served at the time of the battle in one of the armies engaged therein, one of whom shall have served in the Army of the Tennessee, commanded by General U. S. Grant, who shall be chairman of the commission; one in the Army of the Ohio, commanded by General D. C. Buell; and one in the Army of the Mississippi, commanded by General A. S. Johnston. The said commissioners shall have an office in the War Department building, and while on actual duty shall be paid such compensation out of the appropriations provided by this Act as the Secretary of War shall deem reasonable and just; and for the purpose of assisting them in their duties and in ascertaining the lines of battle of all troops engaged and the history of their movements in the battle, the Secretary of War shall have authority to employ, at such compensation as he may deem reasonable, to be paid out of the appropriations made by this Act, some person recognized as well informed concerning the history of the several armies engaged at Shiloh, and who shall also act as secretary of the commission. *Sec. 4, ibid.*

Compensation,  
etc.

**1819.** That it shall be the duty of the commission named in the preceding section, under the direction of the Secretary of War, to open or repair such roads as may be necessary to the purposes of the park, and to ascertain and mark with historical tablets or otherwise, as the Secretary of War may determine, all lines of battle of the troops engaged in the battle of Shiloh and other historical points of interest pertaining to the battle within the park or its vicinity, and the said commission in establishing this military park shall also have authority, under the direction of the Secretary of War, to employ such labor and services and to obtain such supplies and material as may be necessary to the establishment of the said park under such regulations as he may consider best for the interest of the Government, and the Secretary of War shall make and enforce all needed regulations for the care of the park. *Sec. 5, ibid.*

Duty of com-  
mission.  
Sec. 5, *ibid.*

**1820.** That it shall be lawful for any State that had troops engaged in the battle of Shiloh to enter upon the lands of the Shiloh National Military Park for the purpose of ascertaining and marking the lines of battle of its troops engaged therein: *Provided*, That before any such lines are permanently designated the position of the lines and the proposed methods of marking them by monuments, tablets, or otherwise shall be submitted to and approved by the Secretary of War, and all such lines, designs and inscriptions

Marking lines  
of battle, etc.  
Sec. 6, *ibid.*

for the same shall first receive the written approval of the Secretary, which approval shall be based upon formal written reports, which must be made to him in each case by the commissioners of the park: *Provided*, That no discrimination shall be made against any State as to the manner of designating lines, but any grant made to any State by the Secretary of War may be used by any other State. *Sec. 6, ibid.*

Discrimina-  
tions forbidden.

1821. That if any person shall, except by permission of the Secretary of War, destroy, mutilate, deface, injure, or remove any monument, column, statues, memorial structures, or work of art that shall be erected or placed upon the grounds of the park by lawful authority, or shall destroy or remove any fence, railing, inclosure, or other work for the protection or ornament of said park, or any portion thereof, or shall destroy, cut, hack, bark, break down, or otherwise injure any tree, bush, or shrubbery that may be growing upon said park, or shall cut down or fell or remove any timber, battle relic, tree or trees growing or being upon said park, or hunt within the limits of the park, or shall remove or destroy any breastworks, earthworks, walls, or other defenses or shelter on any part thereof constructed by the armies formerly engaged in the battles on the lands or approaches to the park, any person so offending and found guilty thereof, before any justice of the peace of the county in which the offense may be committed or any court of competent jurisdiction shall for each and every such offense forfeit and pay a fine, in the discretion of the justice, according to the aggravation of the offense, of not less than five nor more than fifty dollars, one-half for the use of the park and the other half to the informer, to be enforced and recovered before such justice in like manner as debts of like nature are now by law recoverable in the several counties where the offense may be committed. *Sec. 7, ibid.*

Penalty for de-  
stroying monu-  
ments, etc.  
*Sec. 7, ibid.*

1822. That to enable the Secretary of War to begin to carry out the purpose of this Act, including the condemnation or purchase of the necessary land, marking the boundaries of the park, opening or repairing necessary roads, restoring the field to its condition at the time of the battle, maps and surveys, and the pay and expenses of the commissioners and their assistant, the sum of seventy-five thousand dollars, or such portion thereof as may be necessary, is hereby appropriated, out of any moneys in the Treasury not otherwise appropriated, and disbursements under this Act shall require the approval of the Secretary

Appropriation  
for expenses.  
*Sec. 8, ibid.*

Disburse-  
ments

of War, and he shall make annual report of the same to Congress. *Sec. 8, ibid.*

**1823.** The commissioners appointed under the Act of Congress approved December twenty-seventh, eighteen hundred and ninety-four, to have charge, under the Secretary of War, of the affairs of the Shiloh National Military Park, shall have their office at Pittsburg Landing, Tennessee, or at such other point convenient to the battlefield of Shiloh, Tennessee, as the Secretary of War may direct; and the limit of cost of all the lands to be embraced in the said park is hereby fixed at not to exceed twenty thousand dollars. *Act of March 2, 1895 (28 Stat. L., 945).*

**1824.** And the Secretary of War and the Secretary of the Navy are hereby authorized to deliver to the Commissioners of the Shiloh National Military Park, at the park, upon the requisition of said Commissioners, such condemned cannon, cannon balls, and shells as may be needed for the purposes of the park. *Act of June 11, 1896 (29 Stat. L., 442).*

#### THE ANTIETAM BATTLEFIELD.

**1825.** For the purpose of surveying, locating, and preserving the lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam, and for marking the same, and for locating and marking the position of each of the forty-three different commands of the Regular Army engaged in the battle of Antietam, and for the purchase of sites for tablets for the marking of such positions, fifteen thousand dollars. And all lands acquired by the United States for this purpose, whether by purchase, gift, or otherwise, shall be under the care and supervision of the Secretary of War. *Act of August 30, 1890 (26 Stat. L., 401).*

**1826.** For the purpose of surveying, locating, and preserving the lines of battle of the Army of the Potomac and of the Army of Northern Virginia at Antietam, and for marking the same, and for locating and marking the positions of each of the forty-three different commands of the regular Army engaged in the battle of Antietam, and for the purchase of sites for tablets for the marking of such position, as follows:

For cost of one hundred and fourteen tablets, transporting and setting up of same, purchase of one hundred and fourteen sites for tablets, salaries of board, including office rent, hire of vehicles, mileage, and for condemnation of land and acquiring title for same, in all, sixteen thousand three hundred and ten dollars: *Provided*, That in acquiring

Location of office; limitation on purchases of land.

Mar. 2, 1895, v. 28, p. 945.

Condemned cannon and balls to be furnished. June 11, 1896, v. 29, p. 442.

Preserving, etc., lines of battle, etc. Aug. 30, 1890, v. 26, p. 401.

Tablets, etc. Aug. 5, 1892, v. 27, p. 377.

land for the sites for tablets on the battlefield, the Secretary of War is authorized to proceed in accordance with act approved March third, eighteen hundred and ninety-one, making appropriations for Sundry Civil expenses under title "Chickamauga and Chattanooga National Park." *Act of August 5, 1890 (27 Stat. L., 401).*

1827. For continuing the work of surveying, locating, <sup>Marking lines, etc.</sup> and preserving lines of battle of the Army of the Potomac <sup>Mar. 3, 1893, v. 27, p. 599.</sup> and of the Army of Northern Virginia, at Antietam, and for locating and marking the positions of the forty-three different commands of the regular Army engaged in the battle of Antietam, and for purchase of sites for tablets for marking the same, and for the purchase of roadway to tablets as follows: For the purchase of fifty additional tablets, and transporting and setting up same; purchase of fifty additional sites for tablets; salaries of board, including office rent, hire of vehicles, and mileage, and for the condemnation of the land and acquiring title of the same, and for the purchase of land for roadway from a <sup>Roadway.</sup> point on the Sharpsburg and Hagerstown turnpike to a point on the Sharpsburg and Boonsboro turnpike (said land is known as the Bloody Lane or Sunken Road), and for repairing and fencing in said roadway; fifteen thousand dollars: *Provided*, That the Secretary of War is authorized to supply at Antietam such number of cannon and cannon <sup>Cannon, etc., for marking positions.</sup> balls as his judgment may approve, and which can be spared, for the purpose of marking the positions of the different commands engaged in the battle of Antietam. *Act of March 3, 1893 (27 Stat. L., 599).*

1828. For completing the work of locating, preserving, <sup>Continuing work.</sup> and marking the lines of battle at Antietam, and for properly marking with tablets, each bearing a brief historical legend compiled without praise and without censure, the position occupied by the several commands of the Armies of the Potomac and of Northern Virginia on that field, and for opening and improving avenues along the positions occupied by troops upon those lines, and for fencing the same, nine thousand four hundred and twenty-one dollars, to be immediately available, and to be expended under the direction of the Secretary of War: *Provided*, That the Secretary of War be, and he is hereby, authorized to supply fifty unserviceable wooden field-gun carriages, of the type <sup>Gun carriages.</sup> used during the civil war, for the purpose of marking the positions occupied by batteries of artillery on the said field. *Act of March 2, 1895 (28 Stat. L., 950).*

South Mountain, Harpers Ferry, Cramptons Gap, and Shepherdstown. June 11, 1896, v. 29, p. 443.

**1829.** For completing the work of locating, preserving, and marking the positions of troops and lines of battle of the Union and Confederate armies at Antietam, and the closely related battles of Harpers Ferry, South Mountain, Cramptons Gap, and Shepherdstown, the said lines and positions to be marked with cast-iron tablets, each bearing a brief historical legend compiled without praise and without censure; for improvement of roads owned by the United States at Antietam; for monuments of cannon balls and bases therefor to mark the localities where six general officers were killed; for completing the observatory towers; for guideposts; for preparing and publishing maps indicating the movements and positions of troops engaged in the battles and in the Antietam campaign; and for services and materials incidental to the foregoing, seventeen thousand dollars, to be expended under the direction of the Secretary of War. *Act of June 11, 1896 (29 Stat. L., 443).*

#### THE YELLOWSTONE NATIONAL PARK.

##### LIMITS OF THE PARK.

Public park established near the head waters of the Yellowstone River.

Mar. 1, 1872, c. 24, s. 1, v. 17, p. 32.  
Sec. 2474, R. S.

**1830.** The tract of land in the Territories of Montana and Wyoming, lying near the head-waters of the Yellowstone River, and described as follows, to wit, commencing at the junction of Gardiner's River with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in the following section, shall be considered trespassers and removed therefrom.<sup>1</sup>

Secretary of the Interior to have exclusive control of the park; removal of trespassers.

**1831.** Such public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be,

Sec. 2, *ibid.*

<sup>1</sup> By Executive proclamations No. 6, of March 30, 1891 (26 Stat. L., 23), and No. 6, of September 10, 1891 (27 Stat. L., 11), two tracts of land adjoining the Yellowstone Park in Wyoming were added to the reservation authorized by this section.

Sec. 2475, R. S.

as soon as practicable, to make and publish such regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years, of small parcels of ground, at such places in the park as may require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases, and all other revenues that may be derived from any source connected with the park, to be expended under his direction in the management of the same, and the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purpose of merchandise or profit. He shall also cause all persons trespassing upon the same to be removed therefrom, and generally is authorized to take all such measures as may be necessary or proper to fully carry out the objects and purposes of this section.

## JURISDICTION.

**1832.** That the State of Wyoming is hereby declared to be a State of the United States of America, and is hereby declared admitted into the Union on an equal footing with the original States in all respects whatever; and that the constitution which the people of Wyoming have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed. *Sec. 1, act of July 10, 1890 (26 Stat. L., 222).*

Wyoming admitted as a new State.  
Sec. 1, July 10, 1890, v. 26, p. 222.

**1833.** That the said State shall consist of all the territory included within the following boundaries, to wit: Commencing at the intersection of the twenty-seventh meridian of longitude west from Washington with the forty-fifth degree of north latitude and running thence west to the thirty-fourth meridian of west longitude; thence south to the forty-first degree of north latitude; thence east to the twenty-seventh meridian of west longitude, and thence north to the place of beginning: *Provided*, That nothing in this act contained shall repeal or affect any act of Congress relating to the Yellowstone National Park, or the reservation of the park as now defined, or as may be hereafter defined or extended, or the power of the United States over it; and nothing contained in this act shall interfere with the right and ownership of the United

Constitution ratified, etc.

State boundaries.  
Sec. 2, *ibid*.

Limitations as to Yellowstone National Park, etc.

Ownership, etc., reserved.



States in said park and reservation as it now is or may hereafter be defined or extended by law; but exclusive legislation, in all cases whatsoever, shall be exercised by the United States, which shall have exclusive control and jurisdiction over the same; but nothing in this proviso contained shall be construed to prevent the service within said park of civil and criminal process lawfully issued by the authority of said State; and the said State shall not be entitled to select indemnity school lands for the sixteenth and thirty-sixth sections that may be in said park reservation as the same is now defined or may be hereafter defined. *Sec. 2, ibid.*

Legislation.

Jurisdiction.

Lawful State process may be served.

No indemnity school lands for those in park.

#### PROTECTION OF BIRDS AND ANIMALS.

Sole jurisdiction of United States.  
May 7, 1894, v. 28, p. 73.

**1834.** That the Yellowstone National Park, as its boundaries now are defined, or as they may be hereafter defined or extended, shall be under the sole and exclusive jurisdiction of the United States; and that all the laws applicable to places under the sole and exclusive jurisdiction of the United States shall have force and effect in said park: *Provided, however,* That nothing in this Act shall be construed to forbid the service in the park of any civil or criminal process of any court having jurisdiction in the States of Idaho, Montana, and Wyoming. All fugitives from justice taking refuge in said park shall be subject to the same laws as refugees from justice found in the State of Wyoming. *Sec. 1, act of May 7, 1894 (28 Stat. L., 73).*

State process.

Jurisdiction of Wyoming judicial district.  
*Sec. 2, ibid.*

**1835.** That said park, for all the purposes of this Act, shall constitute a part of the United States judicial district of Wyoming, and the district and circuit courts of the United States in and for said district shall have jurisdiction of all offenses committed within said park. *Sec. 2, ibid.*

Punishment of offenses under Wyoming laws.  
*Sec. 3, ibid.*

**1836.** That if any offense shall be committed in said Yellowstone National Park, which offense is not prohibited or the punishment is not specially provided for by any law of the United States or by any regulation of the Secretary of the Interior, the offender shall be subject to the same punishment as the laws of the State of Wyoming in force at the time of the commission of the offense may provide for a like offense in the said State; and no subsequent repeal of any such law of the State of Wyoming shall affect any prosecution for said offense committed within said park. *Sec. 3, ibid.*

Prohibition of hunting, fishing, etc.  
*Sec. 4, ibid.*

**1837.** That all hunting, or the killing, wounding, or capturing at any time of any bird or wild animal, except dangerous animals, when it is necessary to prevent them

from destroying human life or inflicting an injury, is prohibited within the limits of said park; nor shall any fish be taken out of the waters of the park by means of seines, nets, traps, or by the use of drugs or any explosive substances or compounds, or in any other way than by hook and line, and then only at such seasons and in such times and manner as may be directed by the Secretary of the Interior. That the Secretary of the Interior shall make and publish such rules and regulations as he may deem necessary and proper for the management and care of the park and for the protection of the property therein, especially for the preservation from injury or spoliation of all timber, mineral deposits, natural curiosities, or wonderful objects within said park; and for the protection of the animals and birds in the park, from capture or destruction, or to prevent their being frightened or driven from the park; and he shall make rules and regulations governing the taking of fish from the streams or lakes in the park. Possession within the said park of the dead bodies, or any part thereof, of any wild bird or animal shall be prima facie evidence that the person or persons having the same are guilty of violating this Act. Any person or persons, or stage or express company or railway company, receiving for transportation any of the said animals, birds, or fish so killed, taken, or caught shall be deemed guilty of a misdemeanor, and shall be fined for every such offense not exceeding three hundred dollars. Any person found guilty of violating any of the provisions of this Act or any rule or regulation that may be promulgated by the Secretary of the Interior with reference to the management and care of the park, or for the protection of the property therein, for the preservation from injury or spoliation of timber, mineral deposits, natural curiosities or wonderful objects within said park, or for the protection of the animals, birds and fish in the said park, shall be deemed guilty of a misdemeanor, and shall be subjected to a fine of not more than one thousand dollars or imprisonment not exceeding two years, or both, and be adjudged to pay all costs of the proceedings.

Regulations.

Evidence of violation.

Penalty for unlawful transportation, etc.

**1838.** That all guns, traps, teams, horses, or means of transportation of every nature or description used by any person or persons within said park limits when engaged in killing, trapping, ensnaring, or capturing such wild beasts, birds, or wild animals shall be forfeited to the United States, and may be seized by the officers in said park and held pending the prosecution of any person or persons arrested under charge of violating the provisions of this

Forfeiture of guns, traps, etc.

Act, and upon conviction under this Act of such person or persons using said guns, traps, teams, horses, or other means of transportation such forfeiture shall be adjudicated as a penalty in addition to the other punishment provided in this Act. Such forfeited property shall be disposed of and accounted for by and under the authority of the Secretary of the Interior. *Sec. 4, ibid.*

Commissioner.  
Sec. 5. *ibid.*

1839. That the United States circuit court in said district shall appoint a commissioner, who shall reside in the park, who shall have jurisdiction to hear and act upon all complaints made, of any and all violations of the law, or of the rules and regulations made by the Secretary of the Interior for the government of the park, and for the protection of the animals, birds, and fish and objects of interest therein, and for other purposes authorized by this Act.

Duties.

Such commissioner shall have power, upon sworn information, to issue process in the name of the United States for the arrest of any person charged with the commission of any misdemeanor, or charged with the violation of the rules and regulations, or with the violation of any provision of this Act prescribed for the government of said park, and for the protection of the animals, birds, and fish in the said park, and to try the person so charged, and, if found guilty, to impose the punishment and adjudge the forfeiture prescribed. In all cases of conviction an appeal

Trials.

Appeals.

shall lie from the judgment of said commissioner to the United States district court for the district of Wyoming, said appeal to be governed by the laws of the State of Wyoming providing for appeals in cases of misdemeanor from justices of the peace to the district court of said State; but the United States circuit court in said district may prescribe rules of procedure and practice for said commissioner in the trial of cases and for appeal to said United States district court. Said commissioner shall also have power to issue process as hereinbefore provided for the arrest of any person charged with the commission of any felony within the park, and to summarily hear the evidence introduced, and, if he shall determine that probable cause is shown for holding the person so charged for trial, shall cause such person to be safely conveyed to a secure place for confinement, within the jurisdiction of the United States district court in said State of Wyoming, and shall certify a transcript of the record of his proceedings and the testimony in the case to the said court, which court shall have jurisdiction of the case: *Provided*, That the said commissioner shall grant bail in all cases bailable under

Process in felony cases.

Bail, etc.

the laws of the United States or of said State. All process issued by the commissioner shall be directed to the marshal of the United States for the district of Wyoming; but nothing herein contained shall be construed as preventing the arrest by any officer of the Government or employee of the United States in the park without process of any person taken in the act of violating the law or any regulation of the Secretary of the Interior: *Provided*, That the said commissioner shall only exercise such authority and powers as are conferred by this Act. *Sec. 5, ibid.*

Summary arrests.

Limit of authority.

1840. That the marshal of the United States for the district of Wyoming may appoint one or more deputy marshals for said park, who shall reside in said park, and the said United States district and circuit courts shall hold one session of said courts annually at the town of Sheridan in the State of Wyoming, and may also hold other sessions at any other place in said State of Wyoming or in said National Park at such dates as the said courts may order. *Sec. 6, ibid.*

Deputy marshals.  
*Sec. 6, ibid.*

Terms of court.

1841. That the commissioner provided for in this Act shall, in addition to the fees allowed by law to commissioners of the circuit courts of the United States, be paid an annual salary of one thousand dollars, payable quarterly, and the marshal of the United States and his deputies, and the attorney of the United States and his assistants in said district, shall be paid the same compensation and fees as are now provided by law for like services in said district. *Sec. 7, ibid.*

Fees; etc.  
*Sec. 7, ibid.*

1842. That all costs and expenses arising in cases under this Act, and properly chargeable to the United States, shall be certified, approved, and paid as like costs and expenses in the courts of the United States are certified, approved, and paid under the laws of the United States. *Sec. 8, ibid.*

Costs, etc.  
*Sec. 8, ibid.*

1843. That the Secretary of the Interior shall cause to be erected in the park a suitable building to be used as a jail, and also having in said building an office for the use of the commissioner, the cost of such building not to exceed five thousand dollars, to be paid out of any moneys in the Treasury not otherwise appropriated upon the certificate of the Secretary as a voucher therefor. *Sec. 9, ibid.*

Jail.

1844. That this Act shall not be construed to repeal existing laws conferring upon the Secretary of the Interior and the Secretary of War certain powers with reference to the protection, improvement, and control of the said Yellowstone National Park. *Sec. 10, ibid.*

Existing laws.

## EMPLOYEES.

Employees.  
Mar. 3, 1883, v.  
22, p. 626; July 7,  
1884, v. 23, p. 499.

1845. For every purpose and object necessary for the protection, preservation, and improvement of the Yellowstone National Park, including compensation of superintendent and employees, forty thousand dollars, two thousand dollars of said amount to be paid annually to a superintendent of said park and not exceeding nine hundred dollars annually to each of ten assistants, all of whom shall be appointed by the Secretary of the Interior, and reside continuously in the park and whose duty it shall be to protect the game, timber, and objects of interest therein; the balance of the sum appropriated to be expended in the construction and improvement of suitable roads and bridges within said park, under the supervision and direction of an engineer officer detailed by the Secretary of War for that purpose.<sup>1</sup> *Act of March 3, 1883 (22 Stat. L., 626).*

## LEASES.

Lease of  
grounds; condi-  
tions.

Mar. 3, 1883, v.  
22, p. 626; Aug. 3,  
1894, v. 28, p. 222.

Natural curi-  
osities excluded.

1846. That the Secretary of the Interior is hereby authorized and empowered to lease to any person, corporation, or company, for a period not exceeding ten years, at such annual rental as the Secretary of the Interior may determine, parcels of land in the Yellowstone National Park, of not more than ten acres in extent for each tract and not in excess of twenty acres in all to any one person, corporation, or company on which may be erected hotels and necessary outbuildings: *Provided*, That such lease or leases shall not include any of the geysers or other objects of curiosity or interest in said park, or exclude the public from free and convenient approach thereto or include any ground within one-eighth of a mile of any of the geysers or the Yellowstone Falls, the Grand Canyon, or the Yellowstone River, Mammoth Hot Springs, or any object of curiosity in the park. *Act of August 3, 1894 (28 Stat. L., 222).*

The same sub-  
ject.

Aug. 3, 1894, v.  
28, p. 222.

1847. That such leases shall not convey, either expressly or by implication, any exclusive privilege within the park except upon the premises held thereunder and for the time therein granted. Every lease hereafter made for any property in said park shall require the lessee to observe

<sup>1</sup> The act of June 16, 1880 (21 Stat. L., 273), contained an appropriation of \$15,000 for the care and preservation of the park. The act of March 3, 1881 (chap. 132, 21 Stat. L., 421), contained an appropriation of \$89,76, and chapter 134 of the same act (21 Stat. L., 421) contained an appropriation of \$15,000 for a similar purpose. The act of August 5, 1882 (21 Stat. L., 276), contained an appropriation of \$155 for deficiencies. The act of August 7, 1882 (22 Stat. L., 329), contained an appropriation of \$18,380.41 for care and preservation and provided for the office of superintendent. The provisions of this statute were repeated in the act of March 3, 1885 (23 Stat. L., 499).

and obey each and every provision in any Act of Congress, and every rule, order, or regulation made, or which may hereafter be made and published by the Secretary of the Interior concerning the use, care, management, or government of the park, or any object or property therein, under penalty of forfeiture of such lease, and every such lease shall be subject to the right of revocation and forfeiture, which shall therein be reserved by the Secretary of the Interior: *And provided further*, That persons or corporations now holding leases of ground in the park may, upon the surrender thereof, be granted new leases hereunder, and upon the terms and stipulations contained in their present leases, with such modifications, restrictions, and reservations as the Secretary of the Interior may prescribe.

This act, however, is not to be construed as mandatory upon the Secretary of the Interior, but the authority herein given is to be exercised in his sound discretion. *Ibid*.

**1848.** The Secretary of War, upon the request of the Secretary of the Interior, is hereby authorized and directed to make the necessary details of troops to prevent trespassers or intruders from entering the park for the purpose of destroying the game or objects of curiosity therein, or for any other purpose prohibited by law, and to remove such persons from the park if found therein. *Act of March 3, 1883 (22 Stat. L., 626)*. Detail of troops, etc., for protection of park. Mar. 3, 1883, v. 22, p. 626.

**1849.** For the construction and improvement of suitable roads and bridges within the park, under the supervision and direction of an engineer officer detailed by the Secretary of War for that purpose, twenty thousand dollars.<sup>1</sup> *Act of August 4, 1886 (24 Stat. L., 240)*. Construction of roads and bridges. Aug. 4, 1886, v. 24, p. 240.

**1850.** For the improvement of the Yellowstone National Park, seventy-five thousand dollars, the same, together with the unexpended balance of appropriations already made, to be expended by and under the direction of the Secretary of War. For the repair, maintenance, relocation, and completion of roads, bridges, and paths already in use and necessary to reach objects of natural interest in the Park; \* \* \* any unexpended balance to be applied to the construction of additional roads, bridges, footways, and bridle paths, as the public service may require, in the discretion of the Secretary of War. *Act of March 3, 1891 (26 Stat. L., 977)*. Repair, etc., roads, etc. Mar. 3, 1891, v. 26, p. 977.

<sup>1</sup>The provisions of this statute were repeated in the acts of August 6, 1886 (24 Stat. L., 240); October 9, 1888, which appropriated the sum of \$25,000 for road and bridge construction and supervision; March 2, 1889 (25 Stat. L., 962), which appropriated the sum of \$50,000 for road and bridge construction and for the improvement of roads within the park.

**Completing, etc., roads, etc.** **1851.** For completing the road from Upper Geyser Basin to and around Shoshone Lake; thence across the Continental Divide to Yellowstone Lake and River, and down the latter to the Grand Canyon; thence to Yancey's, to intersect the road from Cook City to Mammoth Hot Springs; in completing the Gibbon and Madison Canyon roads; in improving and maintaining the old road from Lower Basin and Firehole to the Falls of the Yellowstone; in maintaining roads and bridges generally throughout the park, and in making some small extensions to existing roads, seventy-five thousand dollars: *Provided*, That not less than fifty thousand dollars of this appropriation shall be expended for work to be let in sections, after advertisement, to the lowest responsible bidder or bidders therefor, to be executed under the supervision and inspection of an engineer officer of the Army under the direction of the Secretary of War. *Act of August 30, 1890 (26 Stat. L., 398).*

**Repair, etc., roads, etc.** **1852.** For the improvement of the Yellowstone National Park, seventy-five thousand dollars, the same, together with the unexpended balance of appropriations already made, to be expended by and under the direction of the Secretary of War.

For the repair, maintenance, relocation, and completion of roads, bridges, and paths already in use and necessary to reach objects of natural interest in the Park;

For the construction of a road from Grand Canon to Yellowstone Lake outlet, thence to the thumb of the Yellowstone Lake, thence by the shortest practicable route to Fountain Geyser; any unexpended balance to be applied to the construction of additional roads, bridges, footways, and bridle paths, as the public service may require, in the discretion of the Secretary of War. *Act of March 3, 1891 (26 Stat. L., 977).*

**Improvement, etc.** **1853.** For the improvement of the Yellowstone National Park, forty-five thousand dollars; the same to be expended by, and under the direction of the Secretary of War: *Provided*, That fifteen thousand dollars of this amount, or so much thereof as may be necessary may be expended, in the discretion of the Secretary of War, for the construction of a road from the Upper Geyser Basin to a point on Snake River where it crosses the southern boundary of the park.<sup>1</sup> *Act of August 5, 1892 (27 Stat. L., 376).*

**Commissioner.** **1854.** For the improvement of the Yellowstone National Park, to be expended under the direction of the Secretary of War, thirty thousand dollars.

<sup>1</sup> The act of March 3, 1893 (27 Stat. L., 598), appropriated the sum of \$30,000 for the improvement of the park, to be expended under the direction of the Secretary of War.

For salary of commissioner provided for in the Act to protect the birds and animals in Yellowstone National Park and to punish crimes in said park, approved May seventh, eighteen hundred and ninety-four, one thousand dollars. *Act of August 18, 1894 (28 Stat. L., 403).*

**1855.** For the improvement and protection of the Yellowstone National Park, to be expended by and under the direction of the Secretary of War, thirty thousand dollars. Improvements, etc.  
Mar. 2, 1895, v. 28, p. 945.

For salary of commissioner provided for in the Act to protect the birds and animals in Yellowstone National Park and to punish crimes in said park, approved May seventh, eighteen hundred and ninety-four, one thousand dollars. *Act of March 2, 1895 (28 Stat. L., 945).*

## FOREST RESERVATIONS.

**1856.** Whereas, the rapid destruction of timber and ornamental trees in various parts of the United States, some of which trees are the wonders of the world on account of their size and the limited number growing, makes it a matter of importance that at least some of said forests should be preserved: Therefore Preamble.  
Big trees.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That* the tract of land in the State of California known and described as township numbered eighteen south, of range numbered thirty east, also township eighteen south range thirty-one east; and sections thirty-one, thirty-two, thirty-three, and thirty-four, township seventeen, south range thirty east, all east of Mount Diablo meridian, is hereby reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park, or pleasure ground, for the benefit and enjoyment of the people; and all persons who shall locate or settle upon, or occupy the same or any part thereof, except as hereinafter provided, shall be considered trespassers and removed therefrom. *Act of September 25, 1890 (26 Stat. L., 478).* Mount Diablo Reservation.  
Location, etc.  
Sept. 25, 1890, v. 26, p. 478.

**1857.** That said public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury of all timber, mineral deposits, natural curiosities or wonders within said park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years of small parcels Secretary of Interior to control.  
Regulations.  
Sec. 2, *ibid.*  
Leases for buildings.



Expenditure of  
revenues.

Destruction of  
fish and game.

Removal of  
trespassers, etc.

Forest reserva-  
tions.

Sec. 24, Mar. 3,  
1891, v. 26, p. 1103.

of ground not exceeding five acres, at such places in said park as shall require the erection of buildings for the accommodation of visitors; all of the proceeds of said leases and other revenues that may be derived from any source connected with said park to be expended under his direction in the management of the same and the construction of roads and paths therein. He shall provide against the wanton destruction of the fish and game found within said park, and against their capture or destruction, for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and, generally, shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act.<sup>1</sup> *Sec. 2, ibid.*

1858. That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.<sup>2</sup> *Sec. 24, act of March 3, 1891 (26 Stat. L., 1103).*

<sup>1</sup> The act of October 1, 1890 (26 Stat. L., 650), set apart certain tracts of land in California as forest reservations and provided that all persons who should locate or settle upon, or occupy the same or any part thereof, "shall be considered as trespassers and removed therefrom." This statute conferred exclusive control over the reserved tracts upon the Secretary of the Interior. By section 8 of the act of June 5, 1880 (21 Stat. L., 204), a tract of land in Colorado, designated in the statute as the Uncompahgre Park, was set apart for the benefit and enjoyment of the people.

<sup>2</sup> Under the authority conferred by this statute the following forest reservations have been declared by the President: A tract adjoining the Yellowstone Park in Wyoming, Executive Proclamations No. 6, March 30, 1891 (26 Stat. L., 23), and No. 6, September 10, 1891 (27 Stat. L., 11); the Bull Run Reservation in Oregon, Executive Proclamation No. 28, 1892 (27 *ibid.*, 49); the Pecos River Reservation in New Mexico, Executive Proclamation No. 12, January 11, 1892 (*ibid.*, p. 20); the Pikes Peak Reservation in Colorado, Executive Proclamations No. 15, February 11, 1892 (*ibid.*, p. 28), and No. 21, March 18, 1892 (*ibid.*, p. 36); the Plum Creek Reservation in Colorado, Executive Proclamation No. 29, June 23, 1892 (*ibid.*, p. 51); the White River Plateau in Colorado Executive Proclamation No. 8, October 16, 1891 (*ibid.*, p. 15).

The act of March 3, 1875 (18 Stat. L., 517), creating the national park on the island of Mackinac, Michigan, was repealed by the act of March 2, 1895 (28 Stat. L., 946), and the lands composing the same were granted to the State of Michigan for use as a State park, subject to the condition "that whenever the State ceases to use the land for the purpose aforesaid it shall revert to the United States."

## CHAPTER XLIV.

### NATIONAL CEMETERIES.

Par.	Par.
1859. Maintenance of national cemeteries.	1868, 1869. Interments.
1860. Acquisition of lands.	1870, 1871. Jurisdiction, criminal offenses.
1861. Appraisement.	1872, 1873. The United States cemetery near the City of Mexico.
1862. Payment.	1874. Encroachments by railroads.
1863-1865. Superintendents.	
1866, 1867. Inclosures, headstones, and registers.	

**1859.** The Secretary of War shall provide for the care and maintenance of the National Military Cemeteries and for this purpose shall submit an estimate with his annual estimates to Congress and Section four thousand eight hundred and seventy-six of the Revised Statutes is hereby repealed. Maintenance of national cemeteries. R. S. 4876, p. 951. July 14, 1876, v. 19, p. 99.  
*Act of July 24, 1876 (19 Stat. L., 99).*

**1860.** The Secretary of War shall purchase from the owners thereof, at such price as may be mutually agreed upon between the Secretary and such owners, such real estate as in his judgment is suitable and necessary for the purpose of carrying into effect the provisions for national cemeteries, and obtain from such owners the title in fee simple for the same. And in case the Secretary of War is not able to agree with any owner upon the price to be paid for any real estate needed for such purpose, or to obtain from such owner title in fee simple for the same, the Secretary is hereby authorized to enter upon and appropriate any real estate which, in his judgment, is suitable and necessary for such purposes. Acquisition of lands. Feb. 22, 1867, c. 61, s. 4, v. 14, p. 400; July 24, 1876, c. 226, v. 19, p. 99; Mar. 2, 1877, c. 83, v. 19, p. 269. Sec. 4870, R.S.

**1861.** The Secretary of War or the owners of any real estate thus entered upon and appropriated, are authorized to make application for an appraisement of real estate thus entered upon and appropriated, to any circuit or district court within any State or district where such real estate is situated; and such courts shall, upon such application, and in such mode and under such rules and regulations as it may adopt, make a just and equitable appraisement of the Appraisement. Feb. 22, 1867, c. 61, s. 5, v. 14, p. 400. Sec. 4871, R.S.

cash value of the several interests of each and every owner of such real estate and improvements thereon.

**1862.** When appraisement of the real estate thus entered upon and appropriated has been made under the order and direction of the court, the fee simple thereof shall, upon payment to the owner of the appraised value, or in case such owner refuses or neglects for thirty days after the appraisement of the cash value of the real estate or improvements as aforesaid, to demand the same from the Secretary of War, upon depositing the appraised value in the court making such appraisement, to the credit of such owner, be vested in the United States, and its jurisdiction over such real estate shall be exclusive and the same as its jurisdiction over real estate purchased, ceded, or appropriated for the purposes of navy-yards, forts, and arsenals. The Secretary of War is authorized and required to pay to the several owner or owners, respectively, the appraised value of the several pieces or parcels of real estate, as specified in the appraisement of any of such courts, or to pay into any of such courts by deposit, as hereinbefore provided, the appraised value; and the sum necessary for such purpose may be taken from any moneys appropriated for the purposes of national cemeteries.

#### SUPERINTENDENTS.

**1863.** The Secretary of War shall cause to be erected at the principal entrance of each national cemetery a suitable building to be occupied as a porter's lodge; and shall appoint a meritorious and trustworthy superintendent to reside therein, for the purpose of guarding and protecting the cemetery and giving information to parties visiting the same.

**1864.** The superintendents of the national cemeteries shall be selected from meritorious and trustworthy soldiers, either commissioned officers or enlisted men of the volunteer or Regular Army, who have been honorably mustered out or discharged from the service of the United States, and who may have been disabled for active field service in the line of duty.

**1865.** The superintendents of the national cemeteries shall receive for their compensation from sixty dollars to seventy-five dollars a month, each, according to the extent and importance of the cemeteries to which they may be respectively assigned, to be determined by the Secretary of War; and they shall also be furnished with quarters and fuel at the several cemeteries.

## INCLOSURES, HEADSTONES, AND REGISTERS.

**1866.** In the arrangement of the national cemeteries established for the burial of deceased soldiers and sailors, the Secretary of War is hereby directed to have the same inclosed with a good and substantial stone or iron fence; and to cause each grave to be marked with a small headstone or block, which shall be of durable stone, and of such design and weight as shall keep it in place when set, and shall bear the name of the soldier and the name of his State inscribed thereon, when the same are known, and also with the number of the grave inscribed thereon, corresponding with the number opposite to the name of the party in a register of burials to be kept at each cemetery and at the office of the Quartermaster-General, which shall set forth the name, rank, company, regiment, and date of death of the officer or soldier; or if these are unknown, it shall be so recorded.

*Inclosures, headstones, and registers.*  
*Sec. 1, ibid.*  
 June 8, 1872, c. 368, v. 17, p. 345;  
 Mar. 3, 1873, c. 229, v. 17, p. 545.  
*Sec. 4877, R. S.*

**1867.** That the Secretary of War is hereby authorized to erect headstones over the graves of soldiers who served in the Regular or Volunteer Army of the United States during the war for the Union, and who have been buried in private village or city cemeteries, in the same manner as provided by the law of March third, eighteen hundred and seventy-three, for those interred in national military cemeteries; and for this purpose, and for the expenses incident to such work, so much of the appropriation of one million dollars, made in the act above mentioned, as has not been expended, and as may be necessary, is hereby made available.

*Headstones for soldiers' graves in private cemeteries.*  
 Feb. 3, 1879, v. 20, p. 281.

The Secretary of War shall cause to be preserved in the records of his Department the names and places of burial of all soldiers for whom such headstones shall have been erected by authority of this or any former acts.<sup>1</sup> *Act of February 3, 1879 (20 Stat. L., 281).*

*Records.*

## INTERMENTS.

**1868.** All soldiers, sailors, or marines, dying in the service of the United States, or dying in a destitute condition, after having been honorably discharged from the service, or who served during the late war, either in the regular or volunteer forces, may be buried in any national cemetery

*Who may be buried in national cemeteries.*  
 July 17, 1862, c. 200, s. 18, v. 12, p. 596; June 1, 1872, c. 257, v. 17, p. 202;  
 Mar. 3, 1873, c. 276, v. 17, p. 605.  
*Sec. 4878, R. S.*

<sup>1</sup>Provision for carrying this statute into effect has been made in the acts of appropriation of August 4, 1886 (24 Stat. L., 249), March 3, 1887 (24 Stat. L., 534), October 2, 1888 (25 Stat. L., 539), March 2, 1889 (25 Stat. L., 969), August 30, 1890 (26 Stat. L., 400), March 3, 1891 (26 Stat. L., 973), August 5, 1892 (27 Stat. L., 377), March 3, 1893 (27 Stat. L., 599), August 18, 1894 (28 Stat. L., 405), March 2, 1895 (28 Stat. L., 949), and June 11, 1896 (29 Stat. L., 443).



Burial of indigent soldiers.

Limitation.

V. 25, p. 538.

V. 25, p. 969.

Former appropriations made available.

Aug. 30, 1890, v. 26, p. 401.

free of cost. The production of the honorable discharge of a deceased man shall be sufficient authority for the superintendent of any cemetery to permit the interment.

**1869.** For expenses of burying in the Arlington National Cemetery or in the cemeteries of the District of Columbia, indigent ex-Union soldiers, sailors, and marines of the late civil war who die in the District of Columbia, to be disbursed by the Secretary of War, at a cost not exceeding fifty dollars for such burial expenses in each case, exclusive of cost of grave, one thousand dollars; and the appropriation made by the sundry civil appropriation acts approved October second, eighteen hundred and eighty-eight, and March second, eighteen hundred and eighty-nine, for the expenses of burying indigent ex-Union soldiers, is hereby made available alike for all survivors of the Union Army, Navy, and Marine Corps of eighteen hundred and sixty-one to eighteen hundred and sixty-five, dying in the District of Columbia in indigent circumstances.<sup>1</sup> *Act of August 30, 1890 (26 Stat. L., 401).*

#### JURISDICTION, CRIMINAL OFFENSES.

Jurisdiction of United States over national cemeteries.

July 1, 1870, c. 200, s. 1, v. 16, p. 188.

Sec. 4882, R.S.

**1870.** From the time any State legislature shall have given, or shall hereafter give, the consent of such State to the purchase by the United States of any national cemetery, the jurisdiction and power of legislation of the United States over such cemetery shall in all courts and places be held to be the same as is granted by section eight, article one, of the Constitution of the United States; and all provisions relating to national cemeteries shall be applicable to the same.

Penalty for defacing national cemeteries.

Feb. 22, 1867, c. 61, s. 3, v. 14, p. 400.

Sec. 4881, R.S.

**1871.** Every person who willfully destroys, mutilates, defaces, injures, or removes any monument, gravestone, or other structure, or who willfully destroys, cuts, breaks, injures, or removes any tree, shrub, or plant within the limits of any national cemetery, shall be deemed guilty of a misdemeanor, punishable by a fine of not less than twenty-five dollars, and not more than one hundred, or by imprisonment for not less than fifteen days and not more than sixty. The superintendent in charge of any national cemetery is authorized to arrest forthwith any person engaged in committing any misdemeanor herein prohibited, and to bring such person before any United States commissioner or judge of any district or circuit court of the United States within any State or district where any of the cemeteries are

<sup>1</sup> A similar provision occurs in the annual acts of appropriation since that of March 2, 1889 (25 Stat. L., 409).

situated, for the purpose of holding such person to answer for such misdemeanor, and then and there shall make complaint in due form.

#### UNITED STATES CEMETERY NEAR THE CITY OF MEXICO.

1872. The President is authorized to provide, out of the ordinary annual appropriations, for establishing and maintaining United States military cemeteries, for the proper care and preservation and maintenance of the cemetery or burial ground near the City of Mexico, in which are interred the remains of officers and soldiers of the United States, and of citizens of the United States, who fell in battle, or died in and around said city.

Cemetery near the City of Mexico.  
Mar. 3, 1873, c. 267, v. 17, p. 602.  
Sec. 4879, R. S.

1873. The cemetery in Mexico shall be subject to the rules and regulations affecting United States national military cemeteries within the limits of the United States, so far as they may, in the opinion of the President, be applicable thereto.

To be subject to what regulations.—*Ibid.*  
Sec. 4880, R. S.

#### ENCROACHMENT BY RAILROADS, ETC.

1874. That no railroad shall be permitted upon the right of way which may have been acquired by the United States to a national cemetery, or to encroach upon any roads or walks constructed thereon and maintained by the United States. *Act of March 2, 1895 (28 Stat. L., 949).*<sup>1</sup>

Encroachments by railroads forbidden.  
Mar. 2, 1891, v. 28, p. 949.

<sup>1</sup>By separate statutes provision has been made for the construction of roads and other approaches as follows: Act of January 20, 1878 (20 Stat. L., 242), and March 3, 1881 (21 Stat. L., 447), at Vicksburg, Miss.; March 3, 1881 (21 Stat. L., 445), August 7, 1882 (22 Stat. L., 319), March 3, 1883 (22 Stat. L., 617), and July 7, 1884 (23 Stat. L., 219), at Chattanooga, Tenn.; March 3, 1881 (21 Stat. L., 447), August 7, 1882 (22 Stat. L., 150), and July 7, 1884 (22 Stat. L., 319), at Fort Scott, Kans.; July 3, 1882 (22 Stat. L., 150), and March 3, 1891 (26 Stat. L., 978), at Mound City, Ill.; March 3, 1883 (22 Stat. L., 617), July 2, 1886, chapter 610 (24 Stat. L., 121), at Chalmette, La.; March 3, 1885 (23 Stat. L., 507), October 2, 1888 (25 Stat. L., 539), and August 30, 1890 (26 Stat. L., 401), at Marietta, Ga.; March 3, 1885 (23 Stat. L., 507), at Baton Rouge, La.; August 4, 1880 (24 Stat. L., 249), and October 2, 1888 (25 Stat. L., 539), at Springfield, Mo.; July 2, 1886 (24 Stat. L., 121), at Natchez, Miss.; July 28, 1886 (24 Stat. L., 159), at Knoxville, Tenn.; February 23, 1887 (24 Stat. L., 416), and March 2, 1889 (25 Stat. L., 969), at Danville, Va.; February 28, 1887 (24 Stat. L., 431), at Richmond, Va.; October 2, 1888 (25 Stat. L., 539), March 2, 1889, chapter 416 (25 Stat. L., 915), August 30, 1890 (26 Stat. L., 401), at Antietam, Md.; August 30, 1890 (26 Stat. L., 401), at Hampton, Va.; March 2, 1889 (25 Stat. L., 969), at Beverly, N. J.; January 8, 1889 (25 Stat. L., 641), at Florence, S. C.; August 30, 1890 (26 Stat. L., 401), roads at Culpeper and Fredericksburg, Va., and a levee at Brownsville, Tex.; May 14, 1890 (26 Stat. L., 108), at Port Hudson, La.; April 9, 1890 (26 Stat. L., 46), at Staunton, Va.; March 3, 1891 (26 Stat. L., 978), August 5, 1892 (27 Stat. L., 377), March 3, 1893 (27 Stat. L., 599), August 18, 1894, (28 Stat. L., 405), March 2, 1895 (28 Stat. L., 909), at the Presidio of San Francisco, Cal.; December 11, 1890 (26 Stat. L., 687), at Alexandria, Va. The title and possession of the United States to and of land situate at El Paso, Tex., duly purchased for cemetery purposes, would properly be protected against a continuous trespass on the part of the municipality in cutting a street through the land, by an injunction sued out in the proper court, the remedy by suit for damages being inadequate. (a) (Dig. J. A. Gen., 631, par. 17.)

a 1 Pomeroy, Eq. Jur., sec. 138; 3 *ibid.*, secs. 1347, 1356.

## CHAPTER XLV.

### FLAG AND SEAL OF THE UNITED STATES.

Par.	Par.
1875. The flag to be 13 stripes and 37 stars.	1877. Seal of the United States.
1876. A star to be added for every new State.	1878. Secretary of State to keep and use the seal.

The flag to be 13 stripes and 37 stars.

Jan. 13, 1794, c. 1, v. 1, p. 341; Apr. 4, 1818, c. 34, s. 1,

A star to be added for every new State.

Apr. 4, 1818, c. 34, s. 2, v. 3, p. 415. Sec. 1792, R. S.

Seal of the United States.

Sept. 15, 1789, c. 14, s. 3, v. 1, p. 68. Sec. 1793, R. S.

**1875.** The flag of the United States shall be thirteen horizontal stripes, alternate red and white; and the union of the flag shall be [forty-five] stars, white in a blue field. v. 3, p. 415. Sec. 1791, R. S.

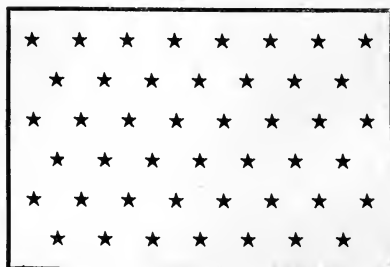
**1876.** On the admission of a new State into the Union one star shall be added to the union of the flag; and such addition shall take effect on the fourth day of July then next succeeding such admission.<sup>1</sup>

**1877.** The seal heretofore used by the United States in Congress assembled is declared to be the seal of the United States.

<sup>1</sup> The Union of the flag now contains forty-five stars, arranged in accordance with the following order:

WAR DEPARTMENT, *Washington, March 17, 1896.*

The field or union of the national flag in use in the Army will on and after July 4, 1896, consist of forty-five stars, in six rows, the first, third, and fifth rows to have eight stars, and the second, fourth, and sixth rows seven stars each, in a blue field, arranged as follows:



DANIEL S. LAMONT,  
*Secretary of War.*

*Held* that there was no law precluding an alien residing in the United States, the subject of a foreign government with which we are at peace, from displaying the flag of his country on his dwelling. (Dig. J. A. Gen., 148, par. 4.)

1878. The Secretary of State shall keep such seal, and shall make out and record, and shall affix the same to, all civil commissions for officers of the United States, to be appointed by the President, by and with the advice and consent of the Senate, or by the President alone. But the seal shall not be affixed to any commission before the same has been signed by the President of the United States, nor to any other instrument, without the special warrant of the President therefor.

Secretary of State to keep and use the seal.  
Sept. 15, 1789, c. 14, s. 4, v. 1, p. 68;  
Mar. 18, 1874, c. 57, v. 18, p. 23;  
Mar. 3, 1875, c. 131, s. 14, v. 18, p. 420.  
Marbury v. Madison, 1 Cr., 158.  
Sec. 1794, R. S.



# APPENDIX.

## THE ARTICLES OF WAR.<sup>1</sup>

Section.	Article.
1342. Articles of war.	3. Officers making unlawful enlistments.
Article.	4. Discharges.
1. Officers shall subscribe these articles.	5. Mustering persons not soldiers.
2. Articles to be read to recruits.	6. Taking money on mustering.

### <sup>1</sup>HISTORICAL NOTE.

In the early periods of English history military law existed only in time of actual war. When war broke out troops were raised as occasion required, and ordinances for their government, or, as they were afterwards called, Articles of War, were issued by the Crown, with the advice of the constable or of the peers or other experienced persons, or were enacted by the commander in chief in pursuance of an authority for that purpose given in his commission from the Crown. (*a*)

These ordinances or articles, however, remained in force only during the service of the troops for whose government they were issued, and ceased to operate on the conclusion of peace. Military law, in time of peace, did not come into existence until the passing of the first mutiny act in 1689.

The system of governing troops in active service by articles of war, issued under the prerogative power of the Crown, whether issued by the King himself, or by the commanders in chief, or by other officers holding commissions from the Crown, continued from the time of the Conquest till long after the passing of the annual mutiny acts, (*b*) and did not actually cease till the prerogative power of issuing such articles was superseded in 1803 by a corresponding statutory power. (*c*)

The earlier articles were of excessive severity, inflicting death or loss of limb for almost every crime. Gradually, however, they assumed something of the shape which they bear in modern times, and the Ordinances or Articles of War issued by Charles I in 1672 formed the groundwork of the Articles of War of 1878, which were consolidated with the mutiny act in the army discipline and regulation act of 1879, which was replaced by the army act of 1881. The army act of 1881, which now constitutes the military code of the British army, has of itself no force, but requires to be brought into operation annually by another act of Parliament, thus securing the constitutional principle of the control of the Parliament over the discipline requisite for the government of the army. (*d*)

The Rules and Articles of War were derived originally from the English mutiny act and articles of war under the following circumstances: In May, 1775, the Continental Congress met in Philadelphia and at once proceeded to levy and organize an army. A system of rules for its government was, of course, indispensable. The members of this Congress were naturally familiar with the English military code. The local troops serving with the English forces sent to this country in 1754 had been brought under the mutiny act, while the armies of Gage and Burgoyne were governed by the English code at the time the first "Continental troops" were raised. It was but natural, therefore, that this body should turn to the mutiny act as a model, and on June 30, 1775, the Congress promulgated articles, sixty-nine in number, for the government of the Continental troops. These articles were adopted from the English, in the same form as our present articles, modified, however, to meet the milder views which were entertained by a people who entertained an objection to a standing army. Additions were made in November of this year but were repealed by the act of September 30, 1776, and new articles adopted. These articles, one hundred and two in number, were modeled upon the British form and were arranged in eighteen sections. With some modifications they remained in force until 1806.

In September, 1789, they were formally recognized and adapted to the new Constitution by the First Congress of the United States. In 1806 the articles, one hundred and one in number, were rearranged and promulgated by Congress; (*e*) the divisions into sections were dropped and the old model substituted. These, with five or six modifications, remained in force for nearly seventy years, and were the governing code of the Army until the passage of the act of June 22, 1874, (*f*) (18 Stat. L., 113). These articles are embodied in the Revised Statutes as sections 1342 and 1343 of that work.

*a* Grose, *Military Antiquities*, vol. 2, p. 58.

*b* *Barwis v. Keppel*, 2 *Wilson's Rep.*, 314.

*c* 43 *Geo. III.*, chapter 20.

*d* *Manual of Military Law*, War Office, Pall Mall, 1884, pp. 9-18.

*e* Act of April 10, 1806 (2 Stat. L., p. 359).

*f* *Ives*, *Mil. Law*, p. 17.

## Article.

7. Returns of regiments, etc.
8. False returns.
9. Captured stores secured for public service.
10. Accountability for arms, etc.
11. Furloughs.
12. Musters.
13. False certificates.
14. False muster.
15. Allowing military stores to be damaged.
16. Wasting ammunition.
17. Losing or spoiling horses, accoutrements, etc.
18. Commanders not to be interested in sale of victuals, etc.
19. Disrespectful words against the President, etc.
20. Disrespect toward commanding officer.
21. Striking a superior officer.
22. Mutiny.
23. Failing to resist mutiny.
24. Quarrels and frays.
25. Reproachful or provoking speeches.
26. Challenges to fight duels.
27. Allowing persons to go out and fight; seconds and promoters.
28. Upbraiding another for refusing challenge.
29. Wrongs to officers, redress of.
30. Wrongs to soldiers, redress of.
31. Lying out of quarters.
32. Soldiers absent without leave.
33. Absence from parade without leave.
34. One mile from camp without leave.
35. Failing to retire at retreat.
36. Hiring duty.
37. Conniving at hiring duty.
38. Drunk on duty.
39. Sentinel sleeping on post.
40. Quitting guard, etc., without leave.
41. False alarms.
42. Misbehavior before the enemy, cowardice, etc.
43. Compelling a surrender.
44. Disclosing watchword.
45. Relieving the enemy.
46. Corresponding with the enemy.

## Article.

47. Desertion.
48. Deserter shall serve full term.
49. Desertion by resignation.
50. Enlisting in other regiment without discharge.
51. Advising to desert.
52. Misconduct at divine service.
53. Profane oaths.
54. Officers to keep good order in their commands.
55. Waste or spoil and destruction of property without orders.
56. Violence to persons bringing provisions.
57. Forcing a safeguard.
58. Certain crimes during rebellion.
59. Offenders to be delivered up to civil magistrates.
60. Certain crimes of fraud against the United States.
61. Conduct unbecoming an officer and gentleman.
62. Crimes and disorders to prejudice of military discipline.
63. Retainers of camp.
64. All troops subject to Articles of War.
65. Arrest of officers accused of crimes.
66. Soldiers accused of crimes.
67. Receiving prisoners.
68. Report of prisoners.
69. Releasing prisoner without authority; escapes.
70. Duration of confinement.
71. Copy of charges and time of trial.
72. Who may appoint general courts-martial.
73. Commanders of divisions and separate brigades may appoint in time of war.
74. Judge-advocate.
75. Members of general courts-martial.
76. When requisite number not at a post.
77. Regular officers, on what courts may sit.
78. Marine and Regular Army officers associated on courts.
79. Officers triable by general courts-martial.
80. Field officers' courts.

## Article.

81. Regimental courts.
82. Garrison courts.
83. Jurisdiction of field officers', regimental, and garrison courts.
84. Oath of members of courts-martial.
85. Oath of judge-advocate.
86. Contempts of court.
87. Behavior of members.
88. Challenges by prisoner.
89. Prisoner standing mute.
90. Judge-advocate, prosecutor and counsel for prisoner.
91. Depositions.
92. Oath of witness.
93. Continuances.
94. Hours of sitting.
95. Order of voting.
96. Sentence of death.
97. Penitentiaries.
98. Flogging.
99. Discharge and dismissal of officers.
100. Publication of officers cashiered for cowardice or fraud.
101. Suspension of officers' pay.
102. No person tried twice for same, etc.
103. Limitation of time of prosecution.
104. Approval of sentence by officer ordering court.
105. Confirmation of death sentence.
106. Confirmation of dismissals in time of peace.
107. Dismissal by division or brigade courts.
108. General officers, sentences respecting.

## Article.

109. Confirmation by officer ordering court.
110. Confirmation of field officers' sentences.
111. Suspension of sentence of death or dismissal.
112. Pardon and mitigation of sentences.
113. Proceedings forwarded to Judge-Advocate-General.
114. Party entitled to a copy.
115. Courts of inquiry, how ordered.
116. Members of court of inquiry.
117. Oaths of members and recorder of court of inquiry.
118. Witnesses before courts of inquiry.
119. Opinion; when given by.
120. Authentication of proceedings of court of inquiry.
121. Proceedings of court of inquiry used as evidence.
122. Command when different corps happen to join.
123. Regular and volunteer officers on same footing as to rank, etc.
124. Rank of militia officers on duty with officer of regular or volunteer forces.
125. Deceased officers' effects.
126. Deceased soldiers' effects.
127. Effects of deceased officers and soldiers to be accounted for.
128. Articles of War to be published once in six months to every regiment, etc.

## Section.

1343. Spies.

Articles of war. Limits of punishment.

Sec. 1342, R. S.  
Apr. 10, 1806, c.  
20, v. 2, p. 359; 27  
Sept., 1890, v. 26,  
p. 491.

SECTION 1342. The armies of the United States shall be governed by the following rules and articles. The word officer, as used therein, shall be understood to designate commissioned officers; the word soldier shall be understood to include non-commissioned officers, musicians, artificers, and privates, and other enlisted men, and the convictions mentioned therein shall be understood to be convictions by court-martial. *Sec. 1342, R. S.*

That whenever by any of the Articles of War for the government of the Army the punishment on conviction of

any military offense is left to the discretion of the court-martial, the punishment therefor shall not, in time of peace, be in excess of a limit which the President may prescribe.<sup>1</sup>  
*Act of September 27, 1890 (26 Stat. L., 491).*

ARTICLE 1. Every officer now in the Army of the United States shall within six months from the passing of this act, and every officer hereafter appointed shall before he enters upon the duties of his office, subscribe these rules and articles.

Officers shall subscribe these articles.

1 Art. War.

ART. 2. These rules and articles shall be read to every enlisted man at the time of, or within six days after, his enlistment, and he shall thereupon take an oath or affirmation, in the following form: "I, A. B., do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States, and the orders of the officers appointed over me, according to the rules and articles of war." This oath may be taken before any commissioned officer of the Army.<sup>2</sup>

Articles to be read to recruits.

2 Art. War.

Jan. 29, 1813, c. 16, s. 13, v. 2, p. 796; Aug. 3, 1861, c. 42, s. 11, v. 12, p. 239.

3 Art. War.

ART. 3. Every officer who knowingly enlists or musters into the military service any minor over the age of sixteen years without the written consent of his parents or guardians, or any minor under the age of sixteen years, or any insane or intoxicated persons, or any deserter from the military or naval service of the United States, or any person who has been convicted of any infamous criminal offense, shall, upon conviction, be dismissed from the service, or suffer such other punishment as a court-martial may direct.<sup>3</sup>

Officers making unlawful enlistments.

3 Art. War.

Mar. 5, 1833, c. 68, s. 6, v. 4, p. 647; Mar. 3, 1863, c. 75, s. 2, v. 12, p. 731; July 4, 1864, c. 237, s. 5, v. 13, p. 380; Mar. 3, 1865, c. 79, s. 18, v. 13, p. 490; May 15, 1872, c. 162, s. 2, v. 17, p. 117.

<sup>1</sup> Under the authority conferred by this statute two executive orders have been issued prescribing limits of punishment for offenses to which specific penalties are not attached in the Articles of War. See G. O. No. 21, A. G. O., of 1891, as modified by the executive order of March 20, 1895 (MANUAL FOR COURTS-MARTIAL, pp. 59-63).

<sup>2</sup> The taking of the oath prescribed by this article is not an essential to the validity of an enlistment. It is, however, an almost invariable part of a regular formal enlistment, and, in the absence of any provision in our law defining in what an enlistment shall consist, it is important that it should not be omitted, for the reason that the oath as taken and subscribed by the party constitutes the regular, and, in some cases, the only, legal written evidence that the personal act of enlisting has been completed by him. (Dig. J. A. Gen., 19, par. 1.) But see Grimley's case (137 U. S., 147), in which it was held that the oath of allegiance was the pivotal fact which changed the status from that of civilian to soldier. Section 11 of the act of August 3, 1861 (12 Stat. L., 289), conferred authority to administer the oath of allegiance upon any commissioned officer of the Army.

The statement in regard to age, incorporated in the printed blank which contains the form of oath prescribed by this article, is no part whatever of the legal oath. (Ibid., par. 2.)

<sup>3</sup> Neither this article, nor the directory provision in *pari materia* of sections 1117-1118, Revised Statutes, renders void enlistments of the classes of persons whose enlistment or muster-in is made punishable and interdicted. Except, of course, in the case of an enlistment of a person clearly *non compos mentis*, and whose contract is a nullity in law independently of any statute, these enlistments are voidable only; the United States may hold the party to service, or may discharge him forthwith in the manner authorized by the fourth article. (Ibid., 20, par. 1.)

It is not essential to a conviction under this article that the officer shall be shown to have had positive and absolute knowledge that the person enlisted by him belonged to one of the classes of persons whose enlistment is made an offense. If he

Discharges.  
4 Art. War.

ART. 4. No enlisted man, duly sworn, shall be discharged from the service without a discharge in writing, signed by a field-officer of the regiment to which he belongs, or by the commanding officer, when no field-officer is present; and no discharge shall be given to an enlisted man before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial.<sup>1</sup>

had such knowledge or information as to place the fact beyond a reasonable doubt he may properly be deemed to have acted "knowingly." (*Ibid.*, par. 2.)

The enlistment of a party who was evidently so much under the influence of liquor as to make it doubtful whether he comprehended the legal effect of his acts, *held* an enlistment of an "intoxicated person" and an offense under this article. (*Ibid.*, par. 3.)

<sup>1</sup> While no soldier can assume to discharge himself from the military service, he is yet, at the expiration of his contract of enlistment, entitled in general to be at once formally discharged by the proper authority. (*a*) In view, however, of the terms of the first clause of this article, *held* that a discharge of a soldier actually takes effect, like a deed, only upon the delivery, actual or constructive, of the written certificate of discharge. Thus, where a soldier's discharge was not received by him at his station—a hospital in the field—till at the end of three months after its date, *held* that it did not take effect till its receipt, and that the soldier was entitled to pay up to that time. (*Dig. Opin. J. A. Gen.*, 20, par. 1.)

Where an honorable discharge has once duly taken effect by the delivery of the formal certificate (see article 4, section 1) it is final and can not be revoked unless obtained by *fraud*. (*b*) But in such a case the revocation should be made within a reasonable time, otherwise the Government will be deemed to have waived the defect. A mere order for a discharge may of course be recalled or suspended at any time before it is executed by the delivery of the discharge ordered. Where an officer of volunteers had been duly mustered out of service—a form of honorable discharge—and was thus a civilian, *held* that a revocation in orders of his muster out, and a substitution thereof of a dishonorable discharge, would—in the absence of any fraud in the case—be wholly unauthorized and illegal. (*Ibid.*, 355, par. 1.)

Where a soldier, by making an alteration in his "descriptive list," so as to cause it to appear that his term of enlistment, which was in fact five years, was three years only, induced the regimental commander to give him an honorable discharge at the end of three years' service, *held*, upon the fraud being presently discovered, that the discharge might legally be revoked and the soldier be brought to trial by court-martial under the ninety-ninth (now sixty-second) article of war. But where, by competent authority, according to the present fourth article, an honorable discharge was given to a soldier who was at the time in arrest under charges, *held* that such discharge—no fraud being imputable to the soldier—was final, and could not legally be revoked. (*Ibid.*, par. 2.)

The fact that a soldier has been a deserter does not affix an irreparable taint upon his status or service when returned from desertion, or preclude his receiving an honorable discharge, if either he be restored to duty without trial, or having been tried and sentenced, he yet, by reason of his imprisonment being fully executed or being remitted before the end of his term, is returned to duty and is in the performance of faithful service when his term is completed. A discharge in the usual form then given to him is an authoritative declaration by it that he leaves the military service in a status of honor. Thus honorably discharged he can not, by reason of his having formerly deserted, be deprived of any rights to pay, allowances, or bounty usually incident upon honorable discharge. (*c*) (*Ibid.*, 356, par. 4.)

A formal discharge, given to a soldier in accordance with this article, is legal evidence of the fact of discharge, as well as of the circumstances—when the same are stated—under which the soldier was separated from the service. (*d*) (*Ibid.*, 21, par. 2.)

This article, in its second clause, specifies two kinds of discharge as authorized to be given to soldiers before their terms of enlistment have expired and which are quite distinct in their nature. The one is given by Executive order and the other by sentence; the one is a rescinding of the contract of the soldier, authorized to be resorted to whenever deemed desirable, at the discretion of the Secretary of War, etc., and is, in law, an honorable discharge or a discharge without honor, as the case may be; the other is a punishment, and therefore a dishonorable discharge. One of the officials named can, of his own authority, no more order a soldier to be, in terms technically, dishonorably discharged than can a court-martial adjudge a soldier to be honorably discharged. A discharge can not legally be given a soldier before the expiration of his term of service except as authorized in this article; and no officer, other than the three designated, can exercise the authority, expressly devolved upon them, of discharging by order. (*e*) (*Ibid.*, par. 3.)

<sup>a</sup> See Justice Story's charge to the jury in *United States v. Travers*, 2 Wheeler Cr. C., 509; also Prendergast, 42.

<sup>b</sup> See opinion of the Attorney-General, in 16 Opins., 352, in which it was held that an honorable discharge obtained by gross falsehood and fraud was revocable by the Secretary of War.

<sup>c</sup> See *United States v. Kelly*, 15 Wallace, 36.

<sup>d</sup> See Board of Commissioners *v. Mertz*, 27 Ind., 103; *Hanson v. S. Scituate*, 115 Mass., 336; *U. S. v. Wright*, 5 Philad., 296.

<sup>e</sup> 3 Opin. Att. Gen., 353.

ART. 5. Any officer who knowingly musters as a soldier a person who is not a soldier shall be deemed guilty of knowingly making a false muster, and punished accordingly.

Mustering persons not soldiers.  
5 Art. War.

ART. 6. Any officer who takes money, or other thing, by way of gratification, on mustering any regiment, troop, battery or company, or on signing muster-rolls, shall be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

Taking money on mustering.  
6 Art. War.

ART. 7. Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. And any officer who, through neglect or design, omits to send such returns, shall, on conviction thereof, be punished as a court-martial may direct.

Returns of regiments, etc.  
7 Art. War.

ART. 8. Every officer who knowingly makes a false return to the Department of War, or to any of his superior officers, authorized to call for such returns, of the state of the regiment, troop or company, or garrison under his command; or of the arms, ammunition, clothing or other stores thereunto belonging, shall, on conviction thereof before a court-martial, be cashiered.<sup>1</sup>

False returns.  
8 Art. War.

ART. 9. All public stores taken from the enemy shall be secured for the service of the United States; and for neglect thereof the commanding officer shall be answerable.<sup>2</sup>

Captured stores secured for public service.  
9 Art. War.

<sup>1</sup> This article refers only to returns made by certain commanders as such. It is only as commander of a regiment, company, or garrison that an officer can be made amenable to a charge under the article. An officer not exercising one of these commands is not within its terms. (*a*) (Dig. Opin. J. A. Gen., 22, par. 1.)

An officer "knowingly makes a false return" under this article who makes a return which he knows to be untrue in any material particular. (*Ibid.*, par. 2.)

The "returns" indicated in the article can scarcely be said to include returns of funds, what is contemplated being mainly returns of the personnel or materiel of the command. A false return of a company fund would more properly be charged under another article, as the sixty-first or sixty-second. (*Ibid.*, par. 3.)

<sup>2</sup> The title to property captured from an enemy in war vests, at the instant of capture, in the captor's Government, which may make such disposition of it as it may deem expedient. The policy and practice of the United States, as to property captured on land, has been to retain it for governmental uses or to sell it and convert the proceeds to its own use. See the "Captured and abandoned property act" (act of March 12, 1863), in the chapter entitled EMPLOYMENT OF MILITARY FORCE, ETC.

This provision is in accordance with the principle of the law of nations and of war, that enemy's property duly captured in war becomes the property of the Government or power by whose forces it is taken, and not that of the individuals who take it. (*b*) "Private persons can not capture for their own benefit." (*c*) Military stores taken from the enemy, becoming upon capture the property of the United States, Congress, which by the Constitution (*d*) is exclusively vested with the power to dispose of the public property, as well as to make rules concerning captures on land and water, can

*a* See G. C. M. O. 12, 19, War Department, 1872.

*b* U. S. v. Klein, 13 Wallace, 136; Decatur v. U. S., Devereux, 110; White v. Red Chief, 1 Woods, 40; Branner v. Felkner, 1 Heisk., 232; Worthy v. Kinamon, 44 Ga., 299; Huff v. Odom, 49 *ibid.*, 395; 13 Opin. Att. Gen., 105; Hough (Practice), 329, 330; G. O. 54, Headquarters of Army, Mexico, 1848; G. O. 21, War Department, 1848; G. O. 64, 107, *ibid.*, 1862. And see also Lamar v. Browne, 2 Otto, 195, in regard to the same principle as illustrated by the captured and abandoned property act of March 12, 1863.

*c* Worthy v. Kinamon, *supra*.

*d* Article I, section 8, paragraph 11; Article IV, section 3, paragraph 2.

Accountability  
for arms, etc.

10 Art. War.

ART. 10. Every officer commanding a troop, battery, or company, is charged with the arms, accouterments, ammunition, clothing, or other military stores belonging to his command, and is accountable to his colonel in case of their being lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

Furloughs.  
Mar. 3, 1863, c.  
75, s. 32, v. 12, p.  
736.

11 Art. War.

ART. 11. Every officer commanding a regiment or an independent troop, battery, or company, not in the field, may, when actually quartered with such command, grant furloughs to the enlisted men, in such numbers and for such time as he shall deem consistent with the good of the service. Every officer commanding a regiment, or an independent troop, battery, or company, in the field, may grant furloughs not exceeding thirty days at one time, to five per centum of the enlisted men, for good conduct in the line of duty, but subject to the approval of the commander of the forces of which said enlisted men form a part. Every company officer of a regiment, commanding any troop, battery, or company not in the field, or commanding in any garrison, fort, post, or barrack, may, in the absence of his field-officer, grant furloughs to the enlisted men, for a time not exceeding twenty days in six months, and not to more than two persons to be absent at the same time.

Musters.

12 Art. War.

ART. 12. At every muster of a regiment, troop, battery, or company, the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent non-commissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster-rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster-rolls, shall be transmitted by the mustering officer to the Department of War, as speedily as the distance of the place and muster will admit.

False certifi-  
cates.

13 Art. War.

ART. 13. Every officer who signs a false certificate, relating to the absence or pay of an officer or soldier, shall be dismissed from the service.<sup>1</sup>

alone authorize the sale or transfer of the same. An officer or soldier of the Army who assumes of his own authority to appropriate such articles renders himself chargeable with a military offense. (a) (Dig. J. A. Gen., p. 22, par. 1.)

<sup>1</sup> It will not be a sufficient defense to a charge under this article that the accused believed the certificate signed by him to be true if it was false in fact. (b) But held that the mere signing, by an officer, of a voucher for his pay, before the last day of the month for which it was due, did not constitute an offense of the class intended to be made punishable by this article. (c) (Dig. Opin. J. A. Gen., 23.)

<sup>a</sup> See, in this connection, section 5313, Revised Statutes.

<sup>b</sup> Samuel, 298. And see O'Brien, 302.

<sup>c</sup> See G. C. M. O. 28, War Department, 1872.

ART. 14. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses, before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the service of the United States.

False muster.  
14 Art. War.

ART. 15. Any officer who, willfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States, shall make good the loss or damage, and be dismissed from the service.

Allowing military stores to be damaged.  
Mar. 2, 1863, c. 67, s. 1. v. 12, p. 696.

15 Art. War.

ART. 16. Any enlisted man who sells, or willfully or through neglect wastes the ammunition delivered out to him, shall be punished as a court-martial may direct.

Wasting ammunition.  
16 Art. War.

ART. 17. Any soldier who sells or through neglect loses or spoils his horse, arms, clothing, or accoutrements shall be punished as a court-martial may adjudge, subject to such limitations as may be prescribed by the President by virtue of the power vested in him.<sup>1</sup>

Selling horse, etc., to be punished by court-martial.  
July 27, 1892, v. 27, p. 277.  
17 Art. War.

ART. 18. Any officer commanding in any garrison, fort, or barracks of the United States who, for his private advantage, lays any duty or imposition upon, or is interested

Commanders not to be interested in sale of victuals, etc.  
18 Art. War.

<sup>1</sup>This article is quite independent of the regulations contained in article 60, Army Regulations, relating to boards of survey. The latter pass upon questions of pecuniary responsibility for the loss, etc., of public property. The court-martial, under this article, simply imposes punishment. (a) (Ibid., 23, par. 1.)

The description, "his clothing," refers to articles which are regularly issued to the soldier for his use in the service and with the safe-keeping of which he is charged. His property in them is qualified by the trust that he can not dispose of them while he is in the military service, and can only use them for military purposes. (Ibid., par. 2.)

Improper dispositions of property in the charge and use of soldiers, other than those indicated in the article, will in general properly be charged under article 62. (Ibid., 24, par. 3.)

Only three offenses are made punishable by this article—selling, through neglect losing, through neglect spoiling. Any other form of wrongful disposition should be made the subject of a charge under article 60 or article 62. The selling, losing, etc., of objects other than those mentioned in this article should be charged under article 62. Held that a selling or losing of the following articles was not punishable under article 17, viz., sheets, pillows, pillowcases, mattress covers, shelter tent, barrack bag, greatcoat strap, tin cup, spoon, knife, fork, meat-ration can, cartridges. (Ibid., par. 4.)

"Unlawfully disposing of" (or "otherwise unlawfully disposing of") clothing, arms, etc., is not a proper form for the charge under this article. A charge under this article should not be expressed in the alternative—as that the accused "sold" or "through neglect lost." The selling, through neglect losing, and through neglect spoiling, are distinct offenses and are to be so charged. (Ibid., par. 5.)

Clothing issued and charged to a soldier is not now (as it was formerly) regarded as remaining the property of the United States. It is now considered as becoming, upon issue, the property of the soldier, although his use of it is, for purposes of discipline, qualified and restricted. Thus, he commits a military offense by disposing of it as specified in this article, though the United States may suffer no loss. (Ibid., par. 6.)

The present seventeenth article (as amended by the act of July 27, 1892) does not authorize a stoppage or forfeiture of pay to reimburse the United States. The stoppage which was enjoined by the old form of the article is dropped entirely from the present statute. This provides for punishment only—does not provide any means of reimbursing the appropriation out of which the lost, etc., property was paid for, or of repairing the loss or damage as such. So, held (April, 1893) that a sentence, upon a conviction under this article, which adjudged a stoppage of pay "to reimburse the United States for the value of the clothing alienated" was unauthorized and inoperative. (Ibid., 25, par. 7.)

a Where a trial is had, the proceedings of a board of survey, already ordered in the same case, will not be competent evidence to prove the fact of the loss, etc., charged. G. C. M. O. 45, Department of the Missouri, 1877; G. C. M. O. 15, Department of Texas, 1877.



in, the sale of any victuals, liquors, or other necessities of life, brought into such garrison, fort, or barracks, for the use of the soldiers, shall be dismissed from the service.

Disrespectful words against the President, etc.

19 Art. War.

ART. 19. Any officer who uses contemptuous or disrespectful words against the President, the Vice-President, the Congress of the United States, or the chief magistrate or legislature of any of the United States in which he is quartered, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. Any soldier who so offends shall be punished as a court-martial may direct.<sup>1</sup>

Disrespect toward commanding officer.

20 Art. War.

ART. 20. Any officer or soldier who behaves himself with disrespect toward his commanding officer shall be punished as a court-martial may direct.<sup>2</sup>

Striking a superior officer.

21 Art. War.

ART. 21. Any officer or soldier who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer death, or such other punishment as a court-martial may direct.<sup>3</sup>

<sup>1</sup> When a trial of an officer or soldier has been resorted to under this article, it has usually been on account of the use of "contemptuous or disrespectful words against the President," or the Government mainly as represented by the President. The deliberate employment of denunciatory or contumelious language in regard to the President, whether spoken in public, or published, or conveyed in a communication designed to be made public, has, in repeated cases, been made the subject of charges and trial under this article; (a) and, where taking the form of a hostile arraignment, by an officer, of the President or his Administration, for the measures adopted in carrying on the late war—a juncture when a peculiar obedience and deference were due, on the part of the subordinate, to the President as Executive and Commander in Chief—was in general punished by a sentence of dismissal. On the other hand, it was held that adverse criticisms of the acts of the President, occurring in political discussions, and which, though characterized by intemperate language, were not apparently intended to be disrespectful to the President personally or to his office, or to excite animosity against him, were not in general to be regarded as properly exposing officers or soldiers to trial under this article. To seek, indeed, for ground of offense in such discussions would ordinarily be inquisitorial and beneath the dignity of the Government. (*Ibid.*, 25.)

<sup>2</sup> The disrespect here indicated may consist in acts or words; (b) and the particular acts or words relied upon as constituting the offense should properly be set forth in substance in the specification. (c) It must be shown in evidence under the charge that the officer offended against was the "commanding officer" of the accused. (d) The commanding officer of an officer or soldier in the sense of this article is properly the superior who is authorized to require obedience to his orders from such officer or soldier, at least for the time being. Thus where a battalion was temporarily detached from a regiment and placed under the orders of the commander of a portion of the Army distinct from that in which the main part of the regiment was included, held that it was the commander of this portion who was the commanding officer of the detachment, and that the use by an officer of such detachment of disrespectful language in reference to the regimental commander (who had remained with and in command of the main body of the regiment) was properly chargeable not under this article, but rather under the sixty-second. (*Dig. Opin. J. A. Gen.*, 26, par. 1.)

Held that disrespectful language used in regard to his captain by a soldier when detached from his company and serving at a hospital, to the surgeon in charge of which he had been ordered to report for duty, was an offense cognizable by court-martial not under this article, but under article 62. (*Ibid.*, par. 2.)

<sup>3</sup> To justify a conviction of the capital offense of offering violence against a superior officer, it should be made to appear in evidence that the accused knew or believed

a See cases in G. C. M. O. 43, War Department, 1863; G. O. 171, Army of the Potomac, 1862; G. O. 23, *ibid.*, 1863; G. O. 52, Middle Department, 1863; G. O. 119, Department of the Ohio, 1863; G. O. 33, Department of the Gulf, 1863; G. O. 68, Department of Washington, 1864; G. O. 86, Northern Department, 1864; G. O. 1, *ibid.*, 1865; G. O. 29, Department of North Carolina, 1865.

b G. O. 44, Department of Dakota, 1872. And see G. C. M. O. 28, War Department, 1875; G. O. 47, Department of the Platte, 1870.

c G. C. M. O. 35, Department of the Missouri, 1872.

d G. O. 53, Department of Dakota, 1871.

ART. 22. Any officer or soldier who begins, excites, causes, or joins in any mutiny or sedition, in any troop,

Mutiny.  
22 Art. War.

that the person assaulted was in fact an officer in the Army and was his "superior" in rank. (a) (*Ibid.*, 27, par. 1.)

Under a charge of a violation of this article in offering violence to a superior officer, it should be alleged and proved that the officer assaulted was at the time "in the execution of his office." (*Ibid.*, par. 2.)

*Held* that in charging a striking or doing of violence to a superior officer under this article, in a case where the assault was fatal, it was allowable to add in the specification, "thereby causing his death," as indicating the measure of violence employed. (*Ibid.*, par. 3.)

The "superior officer" in the sense of this article need not necessarily have been the commanding officer of the accused at the time of the offense. The article is thus broader than article 20, which relates only to an offense against a "commanding officer." (*Ibid.*, par. 4.)

Where an inferior officer was charged with having disobeyed an order given him on the spot by a superior officer, *held* that it should be made to appear in proof that the latter, if not personally known to the accused to be his superior officer, was recognizable as such by his uniform or otherwise. (*Ibid.*, par. 5.)

A noncompliance by a soldier with an order emanating from a noncommissioned officer is not an offense under this article, but one to be charged, in general, under the sixty-second. (b) (*Ibid.*, par. 6.)

Under a charge of a disobedience of the order of a superior officer in violation of this article, it should be alleged, and should appear from the evidence introduced, that the order or "command" was "lawful." An officer or soldier is not punishable under this article for disobeying an unlawful order. But the order of a proper superior is to be presumed to be lawful, and should be obeyed, where it is not clearly and obviously in contravention of law. Unless the illegality is unquestionable, he should obey first and seek redress, if entitled to any, afterwards. A military inferior in refusing or failing to comply with the order of a superior on the ground that the same is, in his opinion, unlawful, does so, of course, on his own personal responsibility and at his own risk. (*Ibid.*, par. 7.)

To justify, from a military point of view, a military inferior in disobeying the order of a superior, the order must be one requiring something to be done which is palpably a breach of law and a crime or an injury to a third person, or is of a serious character (not involving unimportant consequences only) and if done would not be susceptible of being righted. An order requiring the performance of a military duty or act can not be disobeyed with impunity unless it has one of these characters. If not triable under the twenty-first article, such disobedience may be tried under the sixty-second. In the *Cedarquist* case it was held by the Judge-Advocate-General that "there could be no more dangerous principle in the government of the Army than that each soldier should determine for himself whether an order requiring a military duty to be performed is necessary or in accordance with orders, regulations, decision circulars, or custom, and may disobey the order if, in his judgment (taking, of course, all risks in case his judgment should be erroneous), it should not be necessary or should be at variance with orders, regulations, decision circulars, or custom. It is his duty to obey such order first, and if he should be aggrieved thereby, he can seek redress afterwards."

The civil responsibility is another matter. Civil courts have sometimes made allowance for the requirements of military discipline, but, if they should not, the military obligation would remain unimpaired. The soldier, in entering the service, has voluntarily submitted himself to this double and possibly conflicting liability. The evil of an undisciplined soldiery would be far greater than the injustice (apparent, rather than actual) of this principle. (*Opin. J. A. Gen.*)

"The first duty of a soldier is obedience, and without this there can be neither discipline nor efficiency in an army." (*McCall v. McDowell*, 15 Fed. Cas., 1235.)

"To insure efficiency an army must be, to a certain extent, a despotism. Each officer \* \* \* is invested with an arbitrary power over those beneath him, and the soldier who enlists in the army waives, in some particulars, his rights as a civilian, surrenders his personal liberty during the term of his enlistment, and consents to come and go at the will of his superior officers. He agrees to become amenable to the military courts, to be disciplined for offenses unknown to the civil law, to relinquish his right of trial by jury, and to receive punishments which, to the civilian, seem out of all proportion to the magnitude of the offense." (*U. S. v. Clarke*, 3 Fed. Rep., 713—Brown, J.)

"An army is not a deliberative body. It is the executive arm. Its law is that of obedience. No question can be left open as to the right to command in the officer, or the duty of obedience in the soldier. Vigor and efficiency on the part of the officer and confidence among the soldiers in one another are impaired if any question be left open as to their attitude to each other." (*In re Grimley*, 137 U. S., 153.)

The offense of disobedience of orders contemplated by this article consists in a refusal or neglect to comply with a specific order to do or not to do a particular thing. A mere failure to perform a routine duty is properly charged under article 62. (c) Where an officer neglected fully to perform his duty under general instructions given him in regard to the conduct of an expedition against Indians, *held* that his offense was properly chargeable not under the twenty-first but under the sixty-second article. (*Dig. Opin. J. A. Gen.*, 28, par. 9.)

An officer or soldier on leave of absence can not in general be made liable to a

a See G. O. 34, Department of Virginia, 1863.

b See the provision, introductory to the Articles of War, of section 1342, Revised Statutes, in which it is specified that "the word *officer*, as used therein, shall be understood to designate commissioned officers."

c See G. C. M. O. 26, War Department, 1872; G. C. M. O. 7, Department of Texas, 1875; G. O. 24, 35, Fifth Military District, 1868.

battery, company, party, post, detachment, or guard, shall suffer death, or such other punishment as a court-martial may direct.<sup>1</sup>

Failing to re-  
sist mutiny.  
23 Art. War.

ART. 23. Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to

charge of disobedience of orders, except, indeed, where required by a positive order, issued on account of a public emergency, to return before his leave has expired, and failing to comply with such requirement. (*Ibid.*, 29, par. 10.)

An illiterate soldier, unable to sign his name, was furnished with a written exhibit of it, and ordered by his commanding officer to continue to copy the same till he could properly sign his name to papers. He refused. *Held* that such order, while not in fact a legal one, was not one palpably illegal, and that the soldier should have obeyed it and complained afterwards. Disobedience of an order, however, where its illegality is merely doubtful, should be charged under the sixty-second rather than under this article. (*Ibid.*, par. 12.)

Where an officer respectfully declined to comply with the direction of his superior to sign the certificate to a report of target-firing, on the ground that the facts set forth in such certificate were not within his knowledge, he having been stationed at the butt, where he was not in a position to be informed as to such facts, *held* that he was not amenable to a charge of disobedience of orders under this article. (*Ibid.*, 30, par. 16.)

The term officer ("superior officer"), in this as in other articles of war, means commissioned officer. (Section 1342, Revised Statutes.) So *held* that the disobedience by a cadet private of the Military Academy of an order of a cadet lieutenant of his company was not chargeable under this article, but was an offense under article 62. (*Ibid.*, par. 17.)

<sup>1</sup> Mutiny at military law may be defined to be an unlawful opposing or resisting of lawful military authority, with intent to subvert the same, or to nullify or neutralize it for the time. (a) It is this intent which distinguishes mutiny from other offenses, and especially from those with which, to the embarrassment of the student, it has frequently been confused, viz, those punishable by the twenty-first article, as also those which, under the name of "mutinous conduct," are merely forms of violation of article 62. The offenses made punishable by this article are not necessarily "aggregate" or joint offenses; (b) among them is the beginning or causing of a mutiny, which may be committed by a single person. In general, however, the offense here charged will be a concerted proceeding, the concert itself going far to establish the intent necessary to the legal crime. (*Dig. Opin. J. A. Gen.*, p. 30, par. 1.)

To charge as a capital offense under this article a mere act of insubordination or disorderly conduct on the part of an individual soldier or officer, unaccompanied by the intent above indicated, is irregular and improper. (c) Such an act should in general be charged under article 20, 21, or 62. (*Ibid.*, 31, par. 1.)

Soldiers can not properly be charged with the offense of joining in a mutiny under this article where their act consists in refusing, in combination, to comply with an unlawful order. Thus, where a detachment of volunteer soldiers who, under and by virtue of acts of Congress specially authorizing the enlistment of volunteers for the purpose of the suppression of the rebellion, and with the full understanding on their part and that of the officers by whom they were mustered into the service that they were to be employed solely for this purpose, entered into enlistments expressed in terms to be for the war, and after doing faithful service during the war, and just before the legal end of the war, but when it was practically terminated, and when the volunteer organizations were being mustered out as no longer required for the prosecution of the war, were ordered to march to the Plains, and to a region far distant from the theater of the late war, and engage in fighting Indians, wholly unconnected as allies or otherwise with the recent enemy, and thereupon refused together to comply with such orders, *held* that they were not chargeable with mutiny. While by the strict letter of their contracts they were subject to be employed upon any military service up to the last day of their terms of enlistment, the public acts and history of the time made it perfectly clear that this enlistment was entered into for the particular purpose and in contemplation of the particular service above indicated, and to treat the parties as bound to another and distinct service, and liable to capital punishment if they refused to perform it, was technical, unjust, and in substance illegal. (*Ibid.*, par. 3.)

In a case where a brief mutiny among certain soldiers of a colored regiment was clearly provoked by inexcusable violence on the part of their officer, the outbreak not having been premeditated, and the men having been prior thereto subordinate and well conducted, *advised* that a sentence of death imposed by a court-martial upon one of the alleged mutineers should be mitigated and the officer himself brought to trial. Similarly *advised* in the cases of sentences of long terms of imprisonment imposed upon sundry colored soldiers who, without previous purpose of revolt, had been provoked into momentary mutinous conduct by the recklessness of their officer in firing upon them and wounding several, in order to suppress certain insubordination which might apparently have been quelled by ordinary methods. (d) (*Ibid.*, 32, par. 4.)

a Compare the definition and description of mutiny or revolt at maritime law in *U. S. v. Smith*, 1 Mason, 147; *U. S. v. Haines*, 5 *ibid.*, 276; *U. S. v. Kelly*, 4 Wash., 528; *U. S. v. Thompson*, 1 Sumner, 171; *U. S. v. Borden*, 1 Sprague, 376.

b Samuel, 254, 257; G. O. 77, War Department, 1837; G. O. 10, Department of the Missouri, 1863.

c See G. O. 7, War Department, 1848; G. O. 115, Department of Washington, 1865; G. C. M. O. 73, Department of the Missouri, 1873. And compare *U. S. v. Smith*, 1 Mason, 147; *U. S. v. Kelly*, 4 Wash., 528; *U. S. v. Thompson*, 1 Sumner, 171.

d Compare cases in G. O. 12, War Department, 1855; G. O. 104, *ibid.*, 1863; G. C. M. O. 50, Headquarters of Army, 1867.

suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer death, or such other punishment as a court-martial may direct.

ART. 24. All officers, of what condition soever, have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or to another corps, regiment, troop, battery, or company, and to order officers into arrest, and non-commissioned officers and soldiers into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or non-commissioned officer, or draws a weapon upon him, shall be punished as a court-martial may direct.<sup>1</sup>

Quarrels and frays.  
24 Art. War.

ART. 25. No officer or soldier shall use any reproachful or provoking speeches or gestures to another. Any officer who so offends shall be put in arrest. Any soldier who so offends shall be confined, and required to ask pardon of the party offended, in the presence of his commanding officer.<sup>2</sup>

Reproachful or provoking speeches.  
25 Art. War.

ART. 26. No officer or soldier shall send a challenge to another officer or soldier to fight a duel, or accept a challenge so sent. Any officer who so offends shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct.<sup>3</sup>

Challenges to fight duels.  
Feb. 27, 1877, v. 19, p. 244.  
26 Art. War.

<sup>1</sup>It is a principle of the common law that any bystander may and should arrest an affrayer. (1 Hawkins, P. C., c. 63, s. 11; *Timothy v. Simpson*, 1 C. M. & R., 762, 765; *Phillips v. Trull*, 11 Johns., 487.) And that an officer or soldier, by entering the military service, does not cease to be a citizen, and as a citizen is authorized and bound to put a stop to a breach of the peace committed in his presence, has been specifically held by the authorities. (*Burdett v. Abbott*, 4 Taunt., 449; *Bowyer*, Com. on Const. L. of Eng., 499; *Simmons*, secs. 1096-1100.) This article is thus an application of an established common-law doctrine to the relations of the military service. (See its application illustrated in the following general orders: G. O. 4, War Department, 1843; G. O. 63, Department of the Tennessee, 1863; G. O. 104, Department of the Missouri, 1863; G. O. 52, Department of the South, 1871; G. O. 92, *ibid.*, 1872.) (Dig. J. A. Gen., 32.)

<sup>2</sup>This article confers no jurisdiction or power to punish on courts-martial, but merely authorizes the taking of certain measures of prevention and restraint by commanding officers; i. e., measures preventive of serious disorders such as are indicated in the two following articles relating to duels. (a) (*Ibid.*, 33.)

<sup>3</sup>To establish that a challenge was sent, there must appear to have been communicated by one party to the other a deliberate invitation in terms or in substance to engage in a personal combat with deadly weapons, with a view of obtaining satisfaction for wounded honor. (b) The expression merely of a willingness to fight, or the use simply of language of hostility or defiance, will not amount to a challenge. On the other hand, though the language employed be couched in ambiguous terms, with a view to the evasion of the legal consequences, yet if the intention to invite to a duel is reasonably to be implied—and ordinarily, notwithstanding the stilted and obscure verbiage employed, this intent is quite transparent—a challenge will be deemed to have been given. And the intention of the message, where doubtful upon its face, may be illustrated in evidence by proof of the circumstances under which it was sent, and especially of the previous relations of the parties, the contents of other communications between them on the same subject, etc. (c) And technical words in an alleged challenge may be explained by a reference to the so-called duelling code. (d). (Dig. J. A. Gen., 33.)

It may be noted that our Articles of War, unlike the British, fail to make punishable, as a specific military offense, the engaging in a duel. Such an act, therefore, would, as such, be in general chargeable only under article 62. (*Ibid.*, 34.)

a Compare Samuel, 372.

b Compare the definition in 2 Wharton, Cr. L., secs. 2624-2679.

c See note 1 to article 27, par. 2.

d State v. Gibbons, 1 South, 51.

Allowing persons to go out and fight; seconds and promoters.

27 Art. War.

ART. 27. Any officer or non-commissioned officer, commanding a guard, who, knowingly and willingly, suffers any person to go forth to fight a duel, shall be punished as a challenger; and all seconds or promoters of duels, and carriers of challenges to fight duels, shall be deemed principals, and punished accordingly. It shall be the duty of any officer commanding an army, regiment, troop, battery, company, post or detachment, who knows or has reason to believe that a challenge has been given or accepted by any officer or enlisted man under his command, immediately to arrest the offender and bring him to trial.<sup>1</sup>

Upbraiding another for refusing challenge.

28 Art. War.

ART. 28. Any officer or soldier who upbraids another officer or soldier for refusing a challenge shall himself be punished as a challenger; and all officers and soldiers are hereby discharged from any disgrace or opinion of disadvantage which might arise from their having refused to accept challenges, as they will only have acted in obedience to the law, and have done their duty as good soldiers, who subject themselves to discipline.

Wrongs to officers; redress of.

29 Art. War.

ART. 29. Any officer who thinks himself wronged by the commanding officer of his regiment, and, upon due application to such commander, is refused redress, may complain to the general commanding in the State or Territory where such regiment is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon.

Wrongs to soldiers; redress of.

30 Art. War.

ART. 30. Any soldier who thinks himself wronged by any officer may complain to the commanding officer of his regiment, who shall summon a regimental court-martial for the doing of justice to the complainant. Either party may appeal from such regimental court-martial to a general court-martial; but if, upon such second hearing, the appeal appears to be groundless and vexatious, the party appealing shall be punished at the discretion of said general court-martial.<sup>2</sup>

<sup>1</sup>On the general subject of challenges, and the question what constitutes a challenge, see the principal cases of the sending of challenges in our service, as published in G. O. 64, A. G. O., 1827; G. O. 39, 41, *ibid.*, 1835; G. O. 2, War Department, 1858; G. O., 330, *ibid.*, 1863; G. O. 11, Army of the Potomac, 1861; G. O. 46, Department of the Gulf, 1863; G. O. 223, Department of the Missouri, 1864; G. O. 130, *ibid.*, 1872; G. O. 33, Department and Army of the Tennessee, 1864. And compare *Commonwealth v. Levy*, 2 Wheeler, Cr. C., 245; *Commonwealth v. Tibbs*, 1 Dana, 524; *Commonwealth v. Hart*, 6 J. J. March, 119; *State v. Taylor*, 1 So. Ca., 108; *State v. Strickland*, 2 Nott & McCord, 181; *Ivey v. State*, 12 Ala., 277; *Aulger v. People*, 34 Ill., 486; 2 Bishop, Cr. L., sec. 314; Samuel, 384-387; *State v. Gibbons*, 1 South, 51.

<sup>2</sup>See the title "Regimental Courts-Martial" in the chapter entitled MILITARY TRIBUNALS.

This article is not inconsistent with article 83, which prohibits regimental courts from trying commissioned officers. It does not contemplate or provide for a trial of an officer as an *accused*, but simply an investigation and adjustment of some matter in dispute—as, for example, a question of accountability for public property, of right to pay or to an allowance, of relief from a stoppage, etc. The regimental court does

ART. 31. Any officer or soldier who lies out of his quarters, garrison, or camp, without leave from his superior officer, shall be punished as a court-martial may direct.

Lying out of quarters.  
31 Art. War.

ART. 32. Any soldier who absents himself from his troop, battery, company, or detachment, without leave from his commanding officer, shall be punished as a court-martial may direct.<sup>1</sup>

Soldier absent without leave.  
32 Art. War.

ART. 33. Any officer or soldier who fails, except when prevented by sickness or other necessity, to repair, at the fixed time, to the place of parade, exercise, or other rendezvous appointed by his commanding officer, or goes from the same, without leave from his commanding officer, before he is dismissed or relieved, shall be punished as a court-martial may direct.

Absence from parade without leave.  
33 Art. War.

ART. 34. Any soldier who is found one mile from camp,

One mile from camp without leave.  
34 Art. War.

not really act as a court, but as a board, and the "appeal" authorized is practically from one board to another. But though the regimental court has no power to find "guilty" or "not guilty," or to sentence, it should come to some definite opinion or conclusion—one sufficiently specific to allow of its being intelligently reviewed by the general court, if desired. (Dig. J. A. Gen., 35, par. 1.)

The "regimental court-martial" under the thirtieth article of war can not be used as a substitute for a general court-martial or court of inquiry, for it can not try an officer, nor make an investigation for the purpose of determining whether he shall be brought to trial. When, if the soldier's complaint should be sustained, the only redress would be a reprimand to the officer, the matter would not be within the jurisdiction of this court. It can only investigate such matters as are susceptible of redress by the doing of justice to the complainant; that is, when in some way he can be set right by putting a stop to the wrongful condition which the officer has caused to exist. Erroneous stoppages of pay, irregularity of detail, the apparent requirement of more labor than from other soldiers, and the like, might in this way be investigated and the wrongful condition put an end to. The court will in such cases record the evidence and its conclusions of fact, and recommend the action to be taken. The members of the court (and the judge-advocate) will be sworn faithfully to perform their duties as members (and judge-advocate) of the court, and the proceedings will be recorded, as nearly as practicable, in the same manner as the proceedings of ordinary courts-martial. (Manual for Courts-Martial, 89.)

<sup>1</sup> An unauthorized absence from quarters only, unaccompanied with absence from the post or company, is not a technical absence without leave in violation of this article, but an offense under article 62. (Dig. Opin. J. A. Gen., 36.)

Absence without leave may consist in an act of omission as well as in one of commission. Where an officer, detailed to command an escort of prisoners and to deliver them at a certain place, neglected, upon this service being performed, to return with reasonable diligence to his proper station, *held* that he was chargeable with absence without leave, it being the duty of an officer to return promptly from such a service without further orders. (a) (Ibid., 140, par. 1.)

Where an officer or soldier, on returning to his station after an unauthorized absence, is placed upon or allowed to perform full duty by his proper commander, such action, by the custom of the service, operates in general as a waiver of the charge of absence without leave, and may ordinarily be pleaded as a good defense in the event of a trial. (Ibid., par. 2.)

An enlisted man who has absented himself from his post or company without authority is subjected to the forfeiture of pay and allowances prescribed by paragraph 133, Army Regulations of 1895, although not brought to trial for his absence as an offense. The forfeiture is a stoppage by operation of law irrespective of any punishment that may be imposed, and whether any be imposed or not. Thus a soldier acquitted under a charge of desertion is acquitted of the absence without leave involved in the charge, and can not be *punished* therefor; but if he has been absent without leave *in fact*, he incurs the forfeiture specified in the regulation. And a soldier brought to trial for, and convicted of, an absence without leave is subject to the forfeiture, though none be adjudged in the sentence. Otherwise, however, if the findings be *disapproved* as not sustained by the testimony. [But the stoppage incurred under paragraph 126, Army Regulations of 1895, is enforced only upon a conviction by court-martial.] (Ibid., par. 3.)

The forfeiture specified in paragraph 133, Army Regulations of 1895, should not be enforced for absences of less than one day, but the soldier should be left to be punished by sentence of summary court. Thus where the unauthorized absence was for but seven and a half hours, a forfeiture of a day's pay would deprive the soldier of pay for sixteen and a half hours which he had actually earned. *Held*, therefore, that a stoppage of one day's pay in such a case was not warranted. (Ibid., 141, par. 4.)

<sup>a</sup> See, as to the general rule on this subject, G. O. 82, Headquarters of Army, 1866; also paragraph 54, Army Regulations of 1889.

without leave in writing from his commanding officer, shall be punished as a court-martial may direct.

Failing to retire at retreat.  
85 Art. War.

ART. 35. Any soldier who fails to retire to his quarters or tent at the beating of retreat, shall be punished according to the nature of his offense.

Hiring duty.  
36 Art. War.

ART. 36. No soldier belonging to any regiment, troop, battery, or company shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability, or leave of absence. Every such soldier found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

Conniving at hiring duty.  
37 Art. War.

ART. 37. Every non-commissioned officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

Drunk on duty.  
38 Art. War.  
Feb. 18, 1875, c.  
80, v. 18, p. 318;  
Feb. 27, 1877, c.  
69, v. 19, p. 244.

ART. 38. Any officer who is found drunk on his guard, party, or other duty, shall be dismissed from the service. Any soldier who so offends shall suffer such punishment as a court-martial may direct. No court-martial shall sentence any soldier to be branded, marked, or tattooed.<sup>1</sup>

Sentinel sleeping on post.  
39 Art. War.

ART. 39. Any sentinel who is found sleeping upon his

<sup>1</sup> Held that a soldier found drunk when on duty was properly convicted under this article, though his drunkenness actually commenced before he went on the duty, his condition not being perceived till some time after he had entered upon the same. While it is in itself an offense knowingly to allow a soldier to go on duty when under the influence of intoxicating liquor, yet if a soldier is placed on duty while partially under this influence, but without the fact being detected, and his drunkenness continues and is discovered while he remains upon the duty, he is strictly amenable under this article, which prescribes not that the party shall become drunk, but that he shall be "found drunk" on duty. (a) (Dig. Opin. J. A. Gen., 36, par. 1.)

A charge of drunkenness on duty (drill) held not sustained where the party was found drunk, not at or during the drill, but at the hour appointed for the drill, which, however, by reason of his drunkenness, he did not enter upon or attend. The charge should properly have been laid under article 62. (Ibid., 37, par. 2.)

An officer reporting in person drunk, upon his arrival at a post, to the commander of which he had been ordered to report, held chargeable under this article. And so held of an officer reporting, when drunk, to the post commander for orders as officer of the day, after having been duly detailed as such. (Ibid., par. 3.)

But where an officer, after being specially ordered to remain with his company, absented himself from it and from his duty, and while thus absent became and was found drunk, held that he was not strictly chargeable with drunkenness on duty under this article, but was properly chargeable with disobedience of orders and unauthorized absence, aggravated by drunkenness. (Ibid., par. 4.)

A post commander, while present and exercising command as such, is deemed to be at all times on duty in the sense of this article, and thus liable to a charge under the same if he become drunk at the post. (b) (Ibid., par. 5.)

A medical officer of a post, where there are constantly sick persons under his charge who may at any moment require his attendance, may, generally speaking, be deemed to be "on duty," in the sense of the article, during the whole day, and not merely during the hours regularly occupied by sick call, visiting the sick, or attending hospital. If found drunk at any other hour he may, in general, be charged with an offense under this article. (Ibid., par. 6.)

The drunkenness need not be such as totally to incapacitate the party for the duty; it is sufficient if it be such as to materially impair the full and free use of his mental or physical abilities. (c) It is not a sufficient defense to a charge of drunkenness on

<sup>a</sup> Note the emphatic order of the President in regard to violations of this article, published in G. O. 104, Headquarters of Army, 1877. See cases in G. O. 11, Department of Louisiana, 1869; G. C. M. O. 113, Department of the Missouri, 1873.

<sup>b</sup> That the article is not limited in its application to mere duties of detail, but embraces all descriptions and occasions of duty, see the interpretation of the same as declared in G. O. 7, War Department, 1856, and affirmed in G. O. 5, *ibid.*, 1857. The case in the latter order, indeed, was a case of drunkenness while on duty as a post commander. See another case of the same character in G. C. M. O. 21, Department of the Missouri, 1870, and the remarks of Major-General Schofield thereon, and compare G. C. M. O. 9, War Department, 1875.

<sup>c</sup> See G. C. M. O. 33, War Department, 1875; also G. C. M. O. 21, Department of the Missouri, 1870; G. O. 53, 98, Army of the Potomac, 1862; G. O. 48, Department of Virginia and North Carolina, 1864; G. O. 33, Department of the Platte, 1871.

post, or who leaves it before he is regularly relieved, shall suffer death, or such other punishment as a court-martial may direct.<sup>1</sup>

ART. 40. Any officer or soldier who quits his guard, platoon, or division, without leave from his superior officer, except in a case of urgent necessity, shall be punished as a court-martial may direct. Quitting guard,  
etc., without  
leave.  
40 Art. War.

ART. 41. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer death, or such other punishment as a court-martial may direct. False alarms.  
41 Art. War.

ART. 42. Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard, which he is commanded to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer death, or such other punishment as a court-martial may direct.<sup>2</sup> Misbehavior  
before the enemy,  
cowardice, etc.  
42 Art. War.

duty to show that the accused, though under the influence of liquor, contrived to get through and somehow perform the duty.

A finding, under a charge of a violation of this article, of not guilty of being "found drunk," but guilty of being "found under the influence of liquor" (or by which the latter words are substituted in the specification for the former—see Finding, sec. 4), recommended to be disapproved, as making a distinction too fine for a practical administration of justice, and establishing a precedent which must tend to defeat the purpose of the article. (a) (*Ibid.*, 38, par. 7.)

It is immaterial whether the drunkenness be voluntarily induced by spirituous liquor or by opium or other intoxicating drug; in either case the offense may be equally complete. (b) (*Ibid.*, par. 8.)

Drunkenness not on duty, or when off duty, when amounting to a "disorder," should be charged under article 62, unless (in a case of an officer) committed under such circumstances as to constitute an offense under article 61. (*Ibid.*, par. 9.)

No punishment except dismissal can legally be imposed upon an officer on a conviction of the offense made punishable by this article. A sentence imposing, with dismissal, any further punishment, as imprisonment or forfeiture of pay, is, as to such additional penalty, unauthorized and inoperative, and should so far be disapproved. (*Ibid.*, par. 10.)

A soldier drunk on duty otherwise than as specified in General Orders 21 of 1891, II, commits an offense "not herein provided for" (see *ibid.*, IV), and is "punishable as authorized by the Articles of War and the custom of the service," at the discretion of the court-martial. (*Ibid.*, 39, par. 11.)

It is no defense to a charge of "sleeping on post" that the accused had been previously overtaken by excessive guard duty; (c) or that an imperfect discipline prevailed in the command and similar offenses had been allowed to pass without notice; (d) or that the accused was irregularly or informally posted as a sentinel. (e) Evidence of such circumstances, however, may in general be received in extenuation of the offense; or, after sentence, may form the basis for a mitigation or partial remission of the punishment. (f) An officer who places or continues a soldier on duty as a sentinel when, from excessive fatigue, infirmity, or other disability, he is incompetent to perform the important duties of such a position will ordinarily render himself liable to charges. (g) (*Ibid.*, 39.)

<sup>2</sup>Misbehavior before the enemy may be exhibited in the form of cowardice, or it may consist in a willful violation of orders, gross negligence, or inefficiency, an act of treason or treachery, etc. (h) It need not be committed in the actual sight of the

<sup>a</sup> Compare G. C. M. O. 33, War Department, 1875.

<sup>b</sup> Simmons, sec. 157; and see Hough (Precedents), 208; James's Precedents, 60.

<sup>c</sup> See G. O. 74, Army of the Potomac, 1862.

<sup>d</sup> G. O. 74, Army of the Potomac, 1862.

<sup>e</sup> G. O. 10, Middle Military Department, 1865; G. O. 166, Department of the South, 1864.

<sup>f</sup> See G. O. 10, 62, Department of Virginia and North Carolina, 1863; G. O. 2, Northern Department, 1865; G. O. 67, Department of Washington, 1866; G. O. 9, Department of the South, 1870; G. C. M. O. 44, Department of Texas, 1875.

<sup>g</sup> See G. O. 15, Army of the Potomac, 1861; G. O. 62, Department of Virginia and North Carolina, 1863; G. C. M. O. 59, Department of Texas, 1872; G. C. M. O. 80, Department of the Missouri, 1875.

<sup>h</sup> The phases which this offense may assume are well illustrated in cases published in the following general orders: G. O. 5, War Department, 1857; G. O. 183, *ibid.*, 1862; G. O. 18, 134, 146, 189, 204, 229, 282, 317, *ibid.*, 1863; G. O. 27, 64, *ibid.*, 1864; G. C. M. O. 90, 114, 272, 279, *ibid.*, 1864; G. O. 53, 1, 107, 124, 126, 134, 191, 421, *ibid.*, 1865.



Compelling a  
surrender.

43 Art. War.

ART. 43. If any commander of any garrison, fortress, or post is compelled, by the officers and soldiers under his command, to give up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death, or such other punishment as a court-martial may direct.

Disclosing  
watchword.

44 Art. War.

ART. 44. Any person belonging to the armies of the United States who makes known the watchword to any person not entitled to receive it, according to the rules and discipline of war, or presumes to give a parole or watchword different from that which he received, shall suffer death, or such other punishment as a court-martial may direct.

Relieving the  
enemy.

45 Art. War.

ART. 45. Whosoever relieves the enemy with money, victuals, or ammunition, or knowingly harbors or protects an enemy, shall suffer death, or such other punishment as a court-martial may direct.<sup>1</sup>

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enemy, but the enemy must be in the neighborhood, and the act of offense have relation to some movement or service directed against the enemy, or growing out of a movement or operation on his part. It may be committed in an Indian war equally as in a foreign or civil war. (*a*) (*Ibid.*, 40, par. 1.)

The term "his arms or ammunition" does not refer to arms, etc., which are the personal property of the soldier, but means such as have been furnished to him by the proper officer for use in the service. (*b*) The term is to be construed in connection with the further similar expression "his post or colors." (*Ibid.*, 40, par. 2.)

<sup>1</sup>In view of the general term of description in this and the succeeding article, "whosoever," it was *held*, during the late war, by the Judge-Advocate-General and by the Secretary of War, (*c*) and has been held later by the Attorney-General, (*d*) that civilians, equally with military persons, were amenable to trial and punishment by court-martial under either article. (*e*) (*Dig. Opin. J. A. Gen.*, 40, par. 1.) But the sounder construction would seem to be that, as the Articles of War are a code enacted for the government of the military establishment, they relate only to persons belonging to that establishment unless a different intent should be expressed or otherwise made manifest. No such intent is so expressed or made manifest. Persons not belonging to the military establishment may be proceeded against for the acts mentioned in the article, but it is by virtue of the power of another jurisdiction, namely, martial law; and martial law does not owe its existence to legislation but to necessity. The scope of these articles under the legislation of 1776, apparently extending their application to civilians, seems to have become modified on the adoption of the Constitution. (*Opin. J. A. G.*)

During the late war all inhabitants of insurrectionary States were *prima facie* enemies in the sense of this and the succeeding article. (*f*) A citizen of an insurgent State who entered the United States military service became of course no longer an enemy. So *held* of a Lieutenant of the First East Tennessee Cavalry. (*Dig. Opin. J. A. Gen.*, 41, par. 2.)

It is no less a relieving an enemy under this article that the money, etc., furnished

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*a* See case in G. O. 5, War Department, 1857, in which a soldier was sentenced to be hung upon conviction of misbehavior before the enemy on the occasion of a fight with Indians.

*b* See Samuel, 592; Hough, Practice, 336.

*c* See G. O. 67, War Department, 1861; also the following orders of that Department publishing and approving sentences of civilians tried and convicted under those articles: G. O. 76, 175, 250, 371, of 1863; G. O. 51, of 1864; G. C. M. O. 106, 157, of 1864; G. C. M. O. 260, 671, of 1865.

*d* 13 *Opin. Att. Gen.*, 472.

*e* Admitting this construction to be warranted so far as relates to acts committed on the theater of war or within a district under martial law, it is to be noted that it is the effect of the leading adjudged cases to preclude the exercise of the military jurisdiction over this class of offenses when committed by civilians in places not under military government or martial law. See, especially, *Ex parte Milligan*, 4 Wallace, 121-123; *Jones v. Seward*, Barb. 563.

*f* See the opinion of the United States Supreme Court (frequently since reiterated, in substance) as given by Grier, J., in the "Prize Cases," 2 Black, 666 (1862); and by Chase, C. J., in the cases of *Mrs. Alexander's Cotton* and *The Venice*, 2 Wallace, 274, 418 (1864). In the latter case the Chief Justice observes: "The rule which declares that war makes all the citizens or subjects of one belligerent enemies of the Government and of all the citizens or subjects of the other, applies equally to civil and to international wars." That an insurrectionary State was no less "enemy's country," though in the military occupation of the United States, with a military governor appointed by the President, see opinion by Field, J., in *Coleman v. Tennessee*, 7 Otto, 516-517.

ART. 46. Whosoever holds correspondence with, or gives intelligence to, the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial may direct.<sup>1</sup>

Corresponding  
with the enemy.  
46 Art. War.

ART. 47. Any officer or soldier who, having received pay, or having been duly enlisted in the service of the United States, deserts the same, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in time of peace, any punishment, excepting death, which a court-martial may direct.<sup>2</sup>

Desertion.  
47 Art. War.  
May 29, 1830, c.  
183, v. 4, p. 418.

is exchanged for some commodity, as cotton, valuable to the other party. (Ibid., par. 3.)

The act of "relieving the enemy" contemplated by this article is distinguished from that of trading with the enemy in violation of the laws of war, the former being restricted to certain particular forms of relief, while the latter includes every kind of commercial intercourse not expressly authorized by the Government. (Ibid., par. 4.)

<sup>1</sup>Held that the offense of holding correspondence with the enemy was completed by writing and putting in progress a letter to an inhabitant of an insurrectionary State during the late war, it not being deemed essential to this offense that the letter should reach its destination. (a) (Ibid., 42, par. 1.)

It is essential, however, to the offense of giving intelligence to the enemy that material information should actually be communicated to him; the communication may be verbal, in writing, or by signals. (Ibid., par. 2.)

<sup>2</sup>That a soldier has been charged with a desertion is no evidence that he has committed the offense. Thus, held that the mere fact that a soldier, absent without authority, had been arrested and returned to his regiment as a deserter, was no proof whatever of the offense charged. So, held that a mere entry on a morning report book, descriptive roll, or other official statement or return, that a soldier deserted on a certain day, was not legal evidence of a desertion by him, but was evidence only that he had been charged with desertion. (b) So, a report from the Adjutant-General's Office containing extracts from the muster rolls of a regiment on which a soldier of the same was noted as having deserted on a certain date, held incompetent evidence of the fact of desertion, upon a trial of the soldier for that offense. (c) Similarly held that the mere statement of a first sergeant, given as testimony on the trial of a soldier of his company charged with desertion, that the accused "deserted" at a certain time and place, was insufficient as proof of the offense charged, being, indeed, but an assertion of a conclusion of law. In such cases it is for the witness simply to state the facts and circumstances, so far as known to him, attending the act charged, it being the province of the court alone to arrive at the conclusion that the offense has been committed. To convict a deserter upon an accusation merely, however formally and officially the same may be made, would be as unwarranted in law as it would be unjust in fact. (Dig. Opin. J. A. Gen., 339, par. 3.)

The nature of the offense of desertion is well illustrated in cases of escape. The mere fact that a soldier, while awaiting trial or sentence, or while under sentence (and not discharged from the service), escapes from his confinement, is not proof of a desertion on his part, since he may have had in view some minor object, such as the procuring of liquor, etc. (d) But an escape, followed by a considerable absence, especially if the soldier is obliged to be forcibly apprehended, is strong presumptive evidence of the existence of the intent necessary to constitute the crime. So, though the absence involved may be comparatively brief, the circumstances accompanying the escape or attending the apprehension may be such as to justify an equally strong presumption. An escape, with intent not only to evade confinement but to quit the service, while the party is held awaiting proceedings for desertion, is of course a second or additional desertion.

As to the nature of the offense which may be involved, there is properly no substantial distinction between an escape while awaiting trial or sentence and an escape while in confinement under sentence. An escape, indeed, from an imprisonment imposed by sentence would probably be more likely to be characterized by an *animus non revertendi* than an escape from a merely preliminary confinement in arrest. So an escape from confinement while awaiting trial upon a grave charge, which must entail upon conviction a severe punishment, would naturally be more generally so characterized than an escape from an arrest upon a charge of inferior consequence.

Undoubtedly, in the great majority of cases, escape is desertion; the precedents, however, show that it is not necessarily so; and, upon the mere fact alone that a

<sup>a</sup>Compare Hensey's Case, 1 Burrow, 642; Stone's Case, 6 Term, 527; Samuel, 580.

<sup>b</sup>Compare G. C. M. O. 33, Department of the Missouri, 1875.

<sup>c</sup>Compare Hanson v. S. Scituate, 115 Mass., 336.

<sup>d</sup>See a case of this nature (an escaping in order to obtain liquor) in G. O. 32, Department of the South, 1873; and compare the case in G. O. 87, Department of the South, 1872, in which a conviction of desertion is disapproved on the ground that the evidence showed "merely an escape from the guardhouse, without intention to leave the service or the vicinity of the post." And see in this connection Samuel, 324, where to be "discovered," after a short absence, "in the pursuit of some accidental temporary object, though perhaps otherwise illicit," is instanced as not indicating an intent, by the offender, "to sever himself from the service."

Deserter shall serve full term.

Jan. 11, 1812, c. 14, s. 16, v. 2, p. 673; Jan. 29, 1812, c. 16, s. 127 v. 2, p. 796.

#### 48 Art. War.

ART. 48. Every soldier who deserts the service of the United States shall be liable to serve for such period as

soldier has liberated himself from military custody, it is not just to convict him of having designed to dissolve his contract and permanently abandon the military service. Of course, an escape from legal military custody is always an *offense*, and the soldier who has escaped may (where his act does not amount to a desertion) be brought to trial for such offense as "conduct to the prejudice of good order and military discipline."

It need hardly be added that an escape from imprisonment under sentence, effected by a party who has been dishonorably discharged under the same sentence, can not constitute a desertion or other offense, the party at the time of escape being no longer in the military service. (*Ibid.*, 340, par. 4.)

*Held* to be no defense to a charge of desertion that the accused, at the time of the enlistment which he is charged with having abandoned, was an unapprehended deserter from the Army, an enlistment of a deserter being not void but voidable only. (*Ibid.*, 341, par. 5.)

It is no defense to a charge of desertion that the soldier was induced to abandon the service by reason of ill treatment, want of proper food, etc.; such circumstances can only palliate, not excuse, the offense committed. So, in a case of a Swiss, who, having enlisted in our Army, deserted after two years of service, *held* that it was no defense (though, under the circumstances, matter of extenuation) that his act had been induced by an intense *nostalgia* or *maladie du pays*. So, *held*, in a case of a desertion by a German, that the fact that he had received a notification from the military authorities of the North German Empire to report at home for military duty under the penalty of being considered as a deserter from the German army, constituted no defense to a desertion committed by him from our service. (*a*) (*Ibid.*, par. 6.)

It is, however, a complete answer to a charge of desertion before a court-martial that the accused has previously been "restored to duty without trial," as sanctioned by paragraph 128, Army Regulations of 1889 (paragraph 132 of 1895), provided he has been so restored by competent authority, i. e., the commander who would have been authorized to convene a general court for his trial; otherwise, however, when so restored by a superior not duly authorized. (*Ibid.*, par. 7.)

#### REWARDS.

The reward of \$10 made payable by paragraph 124, Army Regulations, 1895, is not due merely on the apprehension of a deserter; he must also be delivered "to the proper military authority at a military station, or at some convenient point as near thereto as can be agreed upon." (*b*) The fact of the offer of a reward for the arrest of a deserter does not authorize a breach of the peace or commission of an illegal act in making the arrest. (*c*) (*Ibid.*, 343, par. 12.)

The amount of the reward—to cite from G. O. 325 of 1863—is in full "for all expenses incurred in apprehending, securing, and delivering a deserter." Disbursements made by a civilian, where no arrest is effected, are at his own risk, and can not legally be reimbursed by the military authorities. (*Ibid.*, 344, par. 13.)

The legal liability imposed upon the soldier by paragraph 124, Army Regulations, to have the amount of the award stopped against his pay, is quite independent of the *punishment* which may be imposed upon him by sentence of court-martial on conviction of the desertion. Such stoppage is incident upon the conviction (*d*) and need not be directed in the sentence; courts-martial, indeed, have sometimes assumed to impose it, like an ordinary forfeiture of pay, but its insertion in the sentence adds nothing to its legal effect. (*Ibid.*, par. 14.)

Where a soldier, charged with desertion, is *acquitted*, or where, if convicted, his conviction is *disapproved* by the competent reviewing authority, he can not legally be made liable for the amount of a reward paid or payable for his arrest as a deserter, since in such cases he is not a deserter in law. (*Ibid.*, par. 15.)

Where a soldier, for whose apprehension as a supposed deserter the legal reward has been paid, is subsequently brought to trial upon a charge of desertion, and is found guilty not of desertion but only of the lesser and distinct offense of absence without leave, he clearly can not legally be held liable for the reward by a stoppage of the amount against his pay. In such a case, the instrumentality resorted to by the United States for determining the nature of his offense—the court-martial—having pronounced that it was not desertion, the Government is bound by the result, and to visit upon him a penalty to which a deserter only can be subject would be

*a* As to the principle of the right of expatriation, as asserted in our public law, see section 1999, Revised Statutes.

*b* The actual payment of the compensation in such cases is authorized by the annual army appropriations acts, which, in appropriating for the incidental expenses of the Quartermaster Department, include as an item "for the apprehension, securing, and delivering of deserters, and the expenses incident to their pursuit."

*c* See, in this connection, *Clay v. United States*, Devereux, 25, in which an officer, who, under the orders of a superior, had, without previously procuring proper authority to enter and search from a civil magistrate, broken into a dwelling house for the purpose of securing the arrest of certain deserters, was held to have committed an unjustifiable trespass, and his claim to be reimbursed by the United States for the amount of a judgment recovered against him on account of his illegal act was disallowed by the Court of Claims. *Held* by the Attorney-General Oct. 12, 1894 (confirming the views of the Judge-Advocate-General), "that the right to forcibly enter into private houses, as asserted by the Adjutant-General's circular No. 6, of 1885, does not exist." And see par. 2, of Circ. No. 12, H. Q. A., 1894, revoking Circ. No. 6, of 1885.

*d* See, to a similar effect, the recent opinion of the Attorney-General referred to in the next note.

shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such soldier shall be tried by a court-martial and punished,

grossly arbitrary and wholly unauthorized. Moreover, such action would be directly at variance with the terms of paragraph 124 of the Army Regulations, which fixes such liability upon the soldier tried in the event only of his conviction of desertion. (a) unless, indeed, the sentence of the court expressly forfeits the amount. (b) (*Ibid.*, par. 16.)

Where a civil official, having made an arrest of a deserter, concealed him from the military authorities, and afterwards permitted or connived at his escape, *recommended* that the Attorney-General be requested to instruct the proper United States district attorney to initiate proceedings under section 5455, Revised Statutes. (*Ibid.*, 345, par. 17.)

Every desertion includes an absence without leave. Upon a trial for desertion the accused is tried also for the absence without leave involved in the offense charged. (c) If acquitted, *without reservation*, of the desertion, he is acquitted also of the lesser offense. If convicted, as he may be (see FINDING, section 8), of the lesser offense only, under a charge of the greater, he is acquitted in law of the latter. (*Ibid.*, par. 18.)

The right of the United States to arrest and bring to trial a deserter is paramount to any right of control over him by a parent on the ground of his minority. (d) (*Ibid.*, par. 19.)

Enlisting in the enemy's army by prisoner of war is desertion, unless submitted to as a last resort to save life or escape extreme suffering, or to obtain freedom. Thus, *held* in a case of a United States soldier who entered the service of the enemy from Andersonville, Ga., in the late war, that the burden of proof was on him to establish that he resorted to such enlistment with design of effecting his escape and rejoining his own army; and that his abandoning such enlistment and coming within our lines at the first opportunity was material evidence of such a design. (*Ibid.*, par. 20.)

A soldier who had been extradited from Mexico solely on a charge of theft, *held* not liable to trial as a deserter; the principle that a person extradited on account of a certain alleged offense is exempt from trial on any other criminal offense (e) being deemed applicable where the other offense is a military one. A deserter from our Army can not, in the absence of any international convention allowing it, legally be arrested as such in Mexico and brought thence into Texas. (*Ibid.*, 346, par. 21.)

The amenability to trial of a deserter from an enlistment in the Army is not affected by the fact that when he enlisted he was a deserter from the Marine Corps. (*Ibid.*, par. 22.)

*Held* that a deserter from a volunteer regiment was, after the disbandment of the volunteer army, no longer amenable to the military jurisdiction, having become thereupon a civilian. (*Ibid.*, par. 23.)

A civil employee of the Quartermaster Department does not become liable as a deserter by abandoning his employment. (*Ibid.*, par. 24.)

The fact that a soldier has been dropped from the rolls as a deserter is not legal evidence to prove the fact of desertion on a trial for that offense. (*Ibid.*, par. 25.)

To entitle a person (under paragraph 122, Army Regulations of 1889—paragraph 124 of 1895) to the reward for the arrest of a deserter, (f) the party arrested must be still a soldier. Though at the time of the arrest the period of his term of enlistment may have expired, or he may be under sentence of dishonorable discharge, yet if he has not been discharged in fact, the official duly making the arrest, etc., on account of a desertion committed before the end of his term, becomes entitled to the payment of the reward specified in the regulations. Similarly *held*, where the soldier, arrested when at large as a deserter, had been sentenced to confinement (without discharge) and had escaped therefrom. (*Ibid.*, par. 26.)

The soldier arrested must be a deserter and legally liable as such. If he has been judicially determined to be not a deserter, as where he has been convicted of absence without leave only (see paragraph 125, Army Regulations of 1889—paragraph 127 of 1895), or if, in view of the limitation of the one hundred and third article, he has a legal defense to a prosecution for desertion (G. O. 22 of 1893), the reward is not payable for his apprehension. (*Ibid.*, 347, par. 27.)

Where the soldier when arrested had been absent but three days, and was still in uniform, and had not been reported or dropped as a deserter, and his company commander had not the "conclusive evidence" of his "intention not to return," referred to in paragraph 132, Army Regulations of 1889 (paragraph 133 of 1895), *held* that there was not sufficient evidence that he was a deserter to justify the payment of the reward for his arrest and delivery. (*Ibid.*, par. 28.)

The arrest made must be a legal one. Thus *held* that the reward was not payable for an arrest made on the soil of Mexico, involving a violation of the territorial rights of that sovereignty. An act done in violation of law can not be the basis of a legal claim. (*Ibid.*, par. 29.)

Where the deserter was not arrested by, but *surrendered* himself to, the civil official, who in good faith took him into custody and securely held and duly delivered

a This conclusion was concurred in by the Attorney-General in 16 Opins., 474.

b See G. O. 38 of 1890.

c See 13 Opins. Att. Gen., 460.

d In re Cosenow, 37 Fed., 668; In re Kaufman, 41 Fed., 876. And compare In re Morrissey, 137 U. S., 157.

e U. S. v. Rauscher, 119 U. S., 407.

f The Army Regulations, so far as it fixes the amount of the "reward," has been superseded by the provision of the recent army appropriation acts of August 6, 1894, and February 12, 1895, to the effect that the sum paid shall not be "greater than ten dollars."

although the term of his enlistment may have elapsed previous to his being apprehended and tried.<sup>1</sup>

Desertion by  
resignation.

Aug. 5, 1861, c.  
54, s. 2, v. 12, p.  
316.

49 Art. War.

ART. 49. Any officer who, having tendered his resignation, quits his post or proper duties, without leave, and with intent to remain permanently absent therefrom, prior to due notice of the acceptance of the same, shall be deemed and punished as a deserter.

Enlisting in  
other regiment  
without dis-  
charge.

50 Art. War.

ART. 50. No non-commissioned officer or soldier shall enlist himself in any other regiment, troop, or company, without a regular discharge from the regiment, troop, or company in which he last served, on a penalty of being

him, *advised* that there had been a substantial apprehension (for the purpose of reward) and that the reward was properly payable. [See Circular No. 1 (H. A.), 1886.] (*Ibid.*, par. 30.)

The delivery should be personal and manual on the part of the civil official. Where a soldier who had deserted was sentenced to a penitentiary as a horse thief, and at the end of his term of imprisonment a United States marshal caused information that he was a deserter to be conveyed to the commander of a neighboring military post, who thereupon had him arrested and brought to the post, *held* that the marshal was not entitled to claim the reward. (*Ibid.*, par. 31.)

So, where a civil official merely informed a captain of artillery that two soldiers serving in his battery were deserters from the battalion of engineers, *held* that, though such information was correct, the official was not entitled to the reward; and that the amount of the same, which had been erroneously paid him on the certificate of the captain, should be charged against the latter under paragraph 736, Army Regulations of 1889 (paragraph 654 of 1895). (*Ibid.*, par. 32.)

The reward should be withheld where there is evidence of *collusion* between the alleged deserter and the civil official. *Advised* that a suspicion of such collusion was properly entertained in a case where the soldier, after an absence of but a few days, voluntarily surrendered himself, at or near the post of delivery, to a policeman, who turned him over, without expense or difficulty, to the military authorities, who did not treat him as a deserter, but caused him to be charged, tried, and convicted as an absentee without leave only. (*Ibid.*, 348, par. 33.)

An officer of the customs, empowered by law to make arrests of persons violating the revenue laws, but having no such general authority as is ordinarily possessed by peace officers "to arrest offenders" (according to the terms of the act of October 1, 1890, authorizing certain civil officials to arrest deserters), *held* not entitled to be paid the regulation reward for the apprehension, etc., of a deserter from the Army. (*Ibid.*, par. 34.)

*Held* that a justice of the peace of Idaho was not, by the laws of that State, a peace officer or authorized to arrest offenders, and was therefore not within the terms of the act of October 1, 1890, or legally entitled to be paid the reward for the arrest, etc., of a deserter. Such justice may by his warrant authorize and thus cause arrests, but actual arrest pertains, under the laws of the State, to another class—sheriffs, constables, city marshals, and policemen. Similarly *held* in regard to an Indian who brought in a deserter to a military post in North Dakota, he having no authority under the laws of that State to make arrests. But *held* that a member of the Indian police, established under the regulations of the Indian Office, was a civil officer having authority to arrest offenders, and was entitled to the reward for the arrest of a deserter. [See Circular No. 12 (H. A.), 1894.] (*Ibid.*, par. 35.)

Circular No. 11 (H. A.), 1883, declares that the reward shall not be paid where the deserter, at the time of arrest, "is serving in some other branch of the Army," etc. Thus *held* that the reward was not payable for the arrest of a deserter from the cavalry who, subsequently to his desertion, had enlisted in an infantry regiment, in which he was serving at the date of the arrest. (*Ibid.*, par. 36.)

A deserter is not chargeable, under paragraph 124, Army Regulations of 1889 (paragraph 126 of 1895), with the expenses of transportation therein specified, if his conviction has been duly *disapproved*, such disapproval being tantamount to an acquittal. (*Ibid.*, par. 38.)

The *expense of the transportation* of a convicted deserter, incurred in the course of the execution of his sentence, is not chargeable against the deserter under paragraph 124, Army Regulations of 1889 (paragraph 126 of 1895), but must be borne by the United States. (*Ibid.*, par. 39.)

<sup>1</sup>The liability to make good to the United States the time lost by desertion, enjoined by the first clause of this article, is independent of any punishment which may be imposed by a court-martial, on conviction of the offense; it need not, therefore, be adjudged or mentioned in terms in a sentence. (a) If the conviction is disapproved, the legal status of the accused is the same as if he had been acquitted, and the obligation of additional service is of course not incurred. (*Ibid.*, 42, par. 1.)

Where a deserter was sentenced to imprisonment for the "balance of his term,"

a See G. O. 21, Department of the Lakes, 1873; G. O. 94, Department of the Missouri, 1867; G. C. M. O. 74, Department of the East, 1873. The old ruling contra (see G. O. 26, 45, Headquarters of Army, 1843) may be regarded as abandoned in our law and practice.

reputed a deserter, and suffering accordingly. And in case any officer shall knowingly receive and entertain such non-commissioned officer or soldier, or shall not, after his being discovered to be a deserter, immediately confine him and give notice thereof to the corps in which he last served, the said officer shall, by a court-martial, be cashiered.<sup>1</sup>

ART. 51. Any officer or soldier who advises or persuades any other officer or soldier to desert the service of the United States, shall, in time of war, suffer death, or such other punishment as a court-martial may direct; and in

Advising to desert.

51 Art. War.  
May 29, 1830, c.  
183, v. 4, p. 418.

held that he was not absolved from the obligation to make good time lost; these words referring to the balance of the term of his original enlistment. (*Ibid.*, par. 2.)

The time passed by a deserter in confinement under sentence can not be computed as a part of the period required by the article to be made good to the United States, such time not being a time of military service, but of punishment. Nor can the period of confinement be credited where the sentence is remitted before it is fully executed. So time passed by the deserter in arrest or confinement (or in hospital), while waiting trial or action upon his sentence, can not be so computed. (*Ibid.*, 43, par. 3.)

The enforcement of the liability, where enforced at all, is generally postponed till after the execution of the punishment (if any) imposed upon the deserter by his sentence. A deserter may still be required to make good the time included in his unauthorized absence from the service, although his term of enlistment has expired pending a term of confinement adjudged him by court-martial on conviction of his offense, provided he has not been discharged. (*Ibid.*, par. 4.)

The United States may waive the liability imposed by the first clause of the article. It is in fact waived where the deserter, without being required to perform the service, is discharged by one of the officials authorized by article 4 to discharge soldiers. So it is waived where the soldier is adjudged to be dishonorably discharged by sentence of court-martial and this punishment is duly approved and thereupon executed. (*Ibid.*, par. 5.)

The provision of the second clause of this article applies only to desertions committed while the soldier is duly in the service and before his term of enlistment has expired. A deserter who has been duly discharged from the service of course does not remain amenable to trial under this article. (*Ibid.*, par. 6.)

The liability to trial and punishment imposed by the second clause of the article is subject to the limitation of prosecutions prescribed by article 103. (*Ibid.*, par. 7.)

The liability to make good the time lost by his unauthorized absence attaches to a deserter as such, whatever his status or the disposition of his case. This liability is quite distinct from the liability to punishment. It results from the violation of his contract, and this contract is subject to the law of specific performance. It attaches, although he may not have been convicted of the offense, (a) although the statute of limitation may have taken effect in his case (whether or not sustained as a plea on a trial by court-martial), although he may have been pardoned, and although he may have been restored to duty without trial. The liability does not attach to mere absentees without leave. (*Ibid.*, par. 8.)

<sup>1</sup>This article, in its first clause, does not create a specific offense, or particular kind of desertion, or an offense distinct from the desertion made punishable in the forty-seventh article, but declares in effect that a soldier who abandons his regiment shall be deemed none the less a deserter although he may forthwith reenlist in a new regiment. It does not render the act of reenlistment a desertion, but simply makes the reenlistment, under the circumstances indicated, *prima facie* evidence of a desertion from the previous enlistment from which the soldier has not been discharged, or, more accurately, evidence of an intent not to return to the same. (b) The object of the provision, as it originally appears in the British code, apparently was to preclude the notion, that might otherwise have been entertained, that a soldier would be excused from repudiating or departing from his original contract of enlistment provided he presently renewed his obligation in a different portion of the military force. (c) (*Dig. Opin. J. A. Gen.*, 44, par. 1.)

Held that an enlisted marine, who abandoned the Marine Corps without a discharge and enlisted in the Army, could not be "reputed a deserter" according to the terms of this article; but *advised* that he be turned over to the commandant of that corps for the proper disposition and action. (*Ibid.*, 45, par. 2.)

Where a soldier enlisted in a certain regiment, after being officially notified that he was duly discharged from a previous enlistment, but without having received the written certificate and evidence of his discharge, which, by mistake or accident, had not been delivered to him as required by article 4, held that he could not properly be "reputed" or charged as a deserter. (*Ibid.*, par. 3.)

<sup>a</sup>A counter view, expressed by the Attorney General (15 Opins., 152; 16 *ibid.*, 170) has not been followed in the military practice.

<sup>b</sup>See the similar view expressed in G. C. M. O. 129, Department of the Missouri, 1872; G. C. M. O. 77, *ibid.*, 1874.

<sup>c</sup>See Samuel, 330, 331.

time of peace, any punishment, excepting death, which a court-martial may direct.<sup>1</sup>

Misconduct at  
divine service.  
52 Art. War.

ART. 52. It is earnestly recommended to all officers and soldiers diligently to attend divine service. Any officer who behaves indecently or irreverently at any place of divine worship shall be brought before a general court-martial, there to be publicly and severely reprimanded by the president thereof. Any soldier who so offends shall, for his first offense, forfeit one-sixth of a dollar; for each further offense he shall forfeit a like sum, and shall be confined twenty-four hours. The money so forfeited shall be deducted from his next pay, and shall be applied, by the captain or senior officer of his troop, battery, or company, to the use of the sick soldiers of the same.

Profane oaths.  
53 Art. War.

ART. 53. Any officer who uses any profane oath or execration shall, for each offense, forfeit and pay one dollar. Any soldier who so offends shall incur the penalties provided in the preceding article; and all moneys forfeited for such offenses shall be applied as therein provided.

Officers to keep  
good order in  
their commands.  
54 Art. War.

ART. 54. Every officer commanding in quarters, garrison, or on the march, shall keep good order, and, to the utmost of his power, redress all abuses or disorders which may be committed by any officer or soldier under his command; and if, upon complaint made to him of officers or soldiers beating or otherwise illtreating any person, disturbing fairs or markets, or committing any kind of riot, to the disquieting of the citizens of the United States, he refuses or omits to see justice done to the offender, and reparation made to the party injured, so far as part of the offender's pay shall go toward such reparation, he shall be dismissed from the service, or otherwise punished, as a court-martial may direct.<sup>2</sup>

<sup>1</sup> A declaration, made by one soldier to another, of a willingness to desert with him in case he should decide to desert, *held* not properly an advising to desert, in the sense of this article. To constitute the offense of advising to desert, it is not essential that there should have been an actual desertion by the party advised. But *held* otherwise as to the offense of persuading to desert; to complete this offense the persuasion should have induced the act. (a) (*Ibid.*, 45.)

<sup>2</sup> While this article would certainly appear to contemplate the making of reparation for injuries done to the persons of citizens rather than for injuries done to their property, yet *advised*, in view of the precedents, that it might probably be regarded as within the equity of the article to indemnify a citizen for wanton injury done to his property by a soldier or soldiers, by means of a stoppage against his or their pay, summarily ordered upon investigation by the commanding officer. (b) In a few cases a stoppage of the pay of an entire regiment, for damage to private property

a Compare Hough (Practice), 172, and cases in G. O. 23, Department of the Missouri, 1862; G. C. M. O. 11, 152, *ibid.*, 1868.

b See G. O. 35, Headquarters of Army, 1868, construing this article, and prescribing the proceeding under it, reparation for injury to property as well as person being authorized. The article, however, is antiquated in form and indefinite and incomplete in its provisions, and calls for repeal or amendment. For some of the principal cases in which it has been applied in our practice, the student is referred to G. O. 4, Department of the Ohio, 1863; G. O. 123, Department of the Gulf, 1864; G. O. 161, Department of Washington, 1865; G. O. 59, *ibid.*, 1866; G. O. 74, Department of Arkansas, 1865; G. O. 48, 55, Department of Louisiana, 1866; G. O. 6, Department of the Cumberland, 1867; G. O. 10, Department of the South, 1870.



ART. 55. All officers and soldiers are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, either in walks or trees, parks, warrens, fish-ponds, houses, gardens, grain-fields, inclosures, or meadows, or maliciously destroys any property whatsoever belonging to inhabitants of the United States, (unless by order of a general officer commanding a separate army in the field), shall, besides such penalties as he may be liable to by law, be punished as a court-martial may direct.

Waste or spoil, and destruction of property without orders.  
55 Art. War.

ART. 56. Any officer or soldier who does violence to any person bringing provisions or other necessities to the camp, garrison, or quarters of the forces of the United States in foreign parts, shall suffer death, or such other punishment as a court-martial may direct.

Violence to persons bringing provisions.  
56 Art. War.

ART. 57. Whosoever, belonging to the armies of the United States in foreign parts, or at any place within the United States or their Territories during rebellion against the supreme authority of the United States, forces a safeguard, shall suffer death.

Forcing a safeguard.  
57 Art. War.  
Feb. 13, 1862, c. 25, s. 5, v. 12, p. 340; July 13, 1861, c. 3, s. 5, v. 12, p. 257; July 31, 1861, c. 32, v. 12, p. 284.

ART. 58. In time of war, insurrection, or rebellion, larceny, robbery, burglary, arson, mayhem, manslaughter, murder, assault and battery with an intent to kill, wounding, by shooting or stabbing, with an intent to commit murder, rape, or assault and battery with an intent to commit rape, shall be punishable by the sentence of a general court-martial, when committed by persons in the military service of the United States, and the punishment in

Certain crimes during rebellion.  
Mar. 3, 1863, c. 75, s. 30, v. 12, p. 736; July 13, 1861, c. 3, s. 5, v. 12, p. 257; July 31, 1861, c. 32, v. 12, p. 284.  
58 Art. War.

committed by its members, has been sanctioned as authorized under the general remedial provisions of this article. (Dig. Opin. J. A. Gen., 46, par. 1.)

The stoppage contemplated is quite distinct from a punishment by fine, and it can not affect the question of the summary reparation authorized by the article, that the offender or offenders may have already been tried for the offense and sentenced to forfeiture of pay. In such a case, indeed, the forfeiture, as to its execution, would properly take precedence of the stoppage. On the other hand, where the stoppage is first duly ordered under the article, it has precedence over a forfeiture subsequently adjudged for the offense. (Ibid., par. 2.)

It does not affect the question of reparation under the article that the offender or offenders may be criminally liable for the injury committed or may have been punished therefor by the civil authorities. (Ibid., 47, par. 3.)

Held that the remedial provision of this article could not be enforced in favor of military persons, or in favor of the United States, or to indemnify parties for property stolen or embezzled. (Ibid., par. 4.)

The pay of the offender or offenders can be resorted to only for the purpose of the "reparation." A military commander can have no authority to add a further amount of stoppage by way of punishment. (Ibid., par. 5.)

Held that, as an agency for assessing the amount of the damage, a court-martial could not properly be substituted for the board directed by General Orders 35, Headquarters of Army, 1868, to be convened for such purpose. (Ibid., par. 6.)

The procedure under this article, and pursuant to General Orders 35 of 1868, is as follows: The citizen aggrieved tenders a "complaint" under oath, charging the injury against a particular soldier or soldiers, described by name (if known), regiment, etc., and accompanied by evidence of the injury, and of the instrumentality of the person or persons accused. If such evidence be satisfactory, the commanding officer has the damages assessed by a board, and makes orders for such stoppage of pay as will be sufficient for the "reparation" enjoined by the article. The commander must have a proper case presented to him; he can not legally proceed sua sponte. (Ibid., par. 7.)

Where proof was duly made under this article of injury done by some persons of a command, but the active perpetrators could not upon investigation be determined, and it appeared that the entire command was present and implicated, held that the stoppage might legally be made against all the individuals present. (Ibid., par. 8.)



any such case shall not be less than the punishment provided, for the like offense, by the laws of the State, Territory, or district in which such offense may have been committed.<sup>1</sup>

ART. 59. When any officer or soldier is accused of a capital crime, or of any offense against the person or property of any citizen of any of the United States, which is punishable by the laws of the land, the commanding officer, and the officers of the regiment, troop, battery, company, or detachment, to which the person so accused belongs, are required, except in time of war, upon application duly made by or in behalf of the party injured, to use their utmost endeavors to deliver him over to the civil magistrate, and to aid the officers of justice in apprehending and securing him, in order to bring him to trial. If, upon such application, any officer refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil magistrates, or to aid the officers of justice in apprehending him, he shall be dismissed from the service.<sup>2</sup>

Delivery of offenders in military service to civil magistrate.

59 Art. War.

Certain crimes of fraud against the United States.

Mar. 2, 1863, c. 67, s. 1, v. 12, p. 696.

60 Art. War.

ART. 60. Any person in the military service of the United States who makes or causes to be made any claim against

<sup>1</sup> The jurisdiction conferred by this article upon military courts has been held by the highest judicial authority to be not exclusive, but concurrent merely with that of the civil tribunals. (a) The word "shall" in the term "shall be punishable" is construed as equivalent to "may." (b) (Dig. Opin. J. A. Gen., 49, par. 2.)

In framing a charge under this article it will not in general be essential to allege in connection with the date of the offense or to show by evidence that the act was committed at a time of war, etc., this being a fact of which a court will ordinarily properly take judicial notice. (c) (Ibid., par. 3.)

*Held* (November, 1865) that military courts were still empowered to exercise the jurisdiction conferred by this article, the status belli not having yet been declared to be terminated, either by the Executive or Congress. A court-martial, of course, could have no authority whatever to decide whether the war was ended. (Ibid., par. 4.)

Where a sentence, adjudged by a court convened by the authority of this article, imposed a punishment of less severity than that provided for the same offense by the law of the State in which the offense was committed (as imprisonment where the law of the State required the death penalty), *held* that such a sentence was unauthorized and inoperative. But though the punishment must not be "less," it may legally be of greater severity than that provided by the local statute. *Held* that the court, in imposing punishment, should be governed by the local law (so far as required by the article), although the offense was committed in a State whose ordinary relations to the General Government had been suspended by a state of war or insurrection. (d) (Ibid., par. 5.)

<sup>2</sup> This article is a recognition of the general principle of the subordination of the military to the civil power, (e) and its main purpose evidently is to facilitate, in cases of offenders against the local civil statutes who happen to be connected with the Army, the execution of those statutes, where, as citizens, such persons remain legally amenable to arrest and trial thereunder. Protection of military persons from civil arrest is not the object of this article. (Dig. Opin. J. A. Gen., 50, par. 1.)

The commanding officer, before surrendering the party, is entitled to require that the "application" shall be so specific as to identify the accused and to show that he is charged with a particular crime or offense which is within the class described in the article. Where it is doubtful whether the application is made in good faith and in the interests of law and justice, the commander may demand that the application be especially explicit and be sworn to; and in general the preferable and, indeed, only satisfactory course will be to require the production, if practicable, of a due and formal warrant or writ for the arrest of the party. (f) The application required by

<sup>a</sup> *Coleman v. Tennessee*, 7 Otto, 513. And see *People v. Gardiner*, 6 Parker, 143; G. O. 29, Department of the Northwest, 1864; G. O. 32, Department of Louisiana, 1866.

<sup>b</sup> *People v. Gardiner*, ante.

<sup>c</sup> See the application of this principle to the fact of the existence of the late war of the rebellion in Justice Field's charge to the grand jury in *U. S. v. Greathouse*, 4 Sawyer, 457.

<sup>d</sup> That the Southern States during the late war were "at no time out of the pale of the Union," see *White v. Hart*, 13 Wallace, 646.

<sup>e</sup> See the declaration of this principle in the case of *Dow v. Johnson*, 10 Otto, 169.

<sup>f</sup> 2 Opin. Att. Gen. 10.

the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or any officer thereof, knowing such claim to be false or fraudulent; or

Making false claim.  
Presenting false claim.

the article should be made in a case where the crime was committed by the party before he entered the military service equally as where it was committed by him while in the service. (a) In the former case a more exact identification may perhaps reasonably be required. (Ibid., p. 51, par. 3.)

The provisions of this article are applicable only when the officer or soldier is accused of a crime or offense "which is punishable by the laws of the land;" i. e., by the public law—statutes or constitution—of the particular State. (b) (Ibid., par. 4.)

The article is not applicable to a case of an offense committed against the laws of the United States, as, for instance, the statutes prohibiting the introduction of liquor into the Indian country. Nor is it applicable to a case of an offense committed in a place over and within which the jurisdiction of the United States is exclusive. (c) (Ibid., p. 52, par. 5.)

The party should be surrendered upon proper application, though the offense be one of which a military court has jurisdiction concurrently with the civil courts; unless, indeed, the military jurisdiction has already duly attached (by means of arrest or service of charges with a view to trial), in which case the prisoner may be surrendered or not as the proper authority may determine. A soldier under a sentence of confinement imposed by court-martial can not, in general, properly be surrendered under this article. In such a case the civil authorities should regularly defer their application till the military punishment has been executed or remitted. (d) Where a soldier, duly surrendered under this article and allowed to go on bail, was thereupon returned to duty, *held* that it was within the spirit of the article for the department commander to instruct the commanding officer of such soldier to cause him to appear for trial at the proper time. (Ibid., par. 6.)

An officer or soldier accused as indicated by the article, though he may be willing and may desire to surrender himself to the civil authorities, or to appear before the civil court, should not in general be permitted to do so, but should be required to await the formal application. (Ibid., 53, par. 7.)

In view of the obligation devolved by this article upon officers of the Army, a post commander would properly be required to apprehend and hold for surrender to the civil authorities a soldier who, having been once surrendered under the article, had escaped and returned to the post. (e) (Ibid., par. 8.)

The term "any of the United States," employed in this article, *held* properly to include any and all of the political members of our governmental system, and to embrace an organized Territory equally as a State. (Ibid., par. 9.)

The article is directory, not jurisdictional. It does not limit the action to be taken by the military authorities to cases where the application is made by the party; it may be made in his behalf. It does not place a soldier who has committed a crime and been indicted therefor beyond the reach of the civil power if the person injured does not apply for his surrender. In a case—one of murder, for example—where there can be no personal application, the State properly takes the place of the individual. And so in all other cases where an indictment has been found or a warrant of arrest has been issued, the State, with which resides the jurisdiction and the power to prosecute, may make the demand, and upon its demand it is the duty of the commanding officer to surrender the party charged. (Ibid., par. 10.)

The article contemplates only cases in which an "officer or soldier is accused," etc. So, *held* that it did not apply to a case of a civilian (Chinese) laundryman employed and residing at a military post accused of a civil crime. While it would be equally desirable that the surrender should be made in such a case, such surrender would be a matter of comity, not of official duty under the article. (Ibid., 54, par. 11.)

This article does not apply to the service by a sheriff on an officer or soldier: of a subpoena to appear as a witness before a civil court. In such a case, indeed, the civil official should, as a matter of comity, apply first to the post commander, whether or not the post be within the exclusive jurisdiction of the United States. It will then be for the commander, in comity, to facilitate the service and to issue the necessary permit or order to enable and cause the officer or soldier to attend the court. (Ibid., par. 12.)

<sup>a</sup> See G. O. 29, Department of the Northwest, 1864, where it is remarked that there is an especial obligation to surrender the soldier where the crime was committed by him before entering the military service.

<sup>b</sup> As to the meaning of the term "laws of the land," especially with reference to municipal ordinances, see *Vanzant v. Waddell*, 2 Yerger, 270; *State Bk. v. Cooper*, *ibid.*, 605; *Horn v. People*, 26 Mich., 228. In 21 Opin. Att. Gen., 88 (published in circular 15, A. G. O., 1894), it was held that a municipal ordinance is within the expression "laws of the land," as used in the fifty-ninth article of war, and that a soldier violating such an ordinance and escaping to a military reservation should be delivered to the civil authorities for trial on demand.

<sup>c</sup> It is further held, in *Ex parte McRoberts*, 16 Iowa, 603, that the provisions of the article apply only to officers and soldiers while within the immediate control and jurisdiction of the military authorities, and therefore do not apply to a case of a soldier absent on furlough; but that such a soldier, pending his furlough, may be arrested in the same manner as any civilian.

<sup>d</sup> Compare 6 Opin. Att. Gen., 423.

<sup>e</sup> See a case to a similar effect published in G. O. 7, Department of the South, 1871.

Agreement to obtain payment of false claim.

Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

False paper.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

Perjury.

Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures or advises the making of, any oath to any fact or to any writing or other paper, knowing such oath to be false; or<sup>1</sup>

Forgery.

Who, for the purpose of obtaining, or aiding others to

<sup>1</sup> The offense known as the duplicating of pay rolls, where it involves, as it generally does, a presenting or a causing to be presented of a false or fraudulent claim against the United States, is properly chargeable under this article. (Dig. Opin. J. A. Gen., 55, par. 1.)

When an officer who had been sentenced to forfeit all pay due, but whose sentence had not yet been approved or published, presented pay accounts to the paymaster for his pay, and received the amount of the same, *held* that he was not triable for the offense of presenting a fraudulent claim under this article. (Ibid., par. 2.)

The presenting of false and fraudulent claims for horses lost in battle, for recruiting expenses, and for rewards for the arrest of deserters, *held* offenses within paragraphs 1, 2, and 4 of this article. (Ibid., par. 3.)

Where a soldier, in order to procure his discharge from the service and the payment thereupon of a considerable amount not in fact due him, forged the name of his commanding officer on a discharge paper and a "final statement" paper, and presented the same to a paymaster, *held* that he was chargeable with offenses defined in the second, fourth, and sixth paragraphs of this article. (Ibid., par. 4.)

Where a disbursing officer, having caused a creditor of the United States to sign a receipt in blank, paid him a less sum than was due him, and afterwards inserted the true amount due in the receipt, so as to obtain credit with the United States for the greater sum, *held* that he was chargeable with the offense defined in the seventh paragraph of this article. (Ibid., 56, par. 5.)

Where an officer, by collusion with a contractor, who had contracted for the delivery of military supplies, received for a pecuniary consideration from the latter a less amount of supplies than the United States was entitled to under the contract, while at the same time giving him a voucher certifying on its face the delivery of the whole amount, *held* that such officer was chargeable with an offense of the class defined in the eighth paragraph of this article. (Ibid., par. 6.)

In a case of embezzlement of public funds (a) or property charged under this article, it is not necessary to allege in terms, or to prove, an intent to defraud the United States. It is the act of legal embezzlement which is made the offense, irrespective of the purpose or motive of such act. (Ibid., par. 7.)

In order to determine whether certain acts or conduct may properly be charged as constituting embezzlement of public money under the ninth paragraph of this article, the sections of the Revised Statutes, especially those contained in chapter 6 of Title 70, may properly be resorted to. Acts here specified as constituting embezzlements in law may, when committed by officers of the Army, be charged as embezzlements under this article, and the rules of evidence established by these sections may also be applied, where apposite, to military cases. (b) But as to the penalties prescribed in the same, these, though useful as going to indicate a reasonable measure of punishment when imprisonment or fine is proposed to be adjudged, are of course in no respect obligatory upon military tribunals, and any approved military penalty or penalties, such as dismissal, suspension, etc., may be imposed by courts-martial upon conviction of embezzlement, either alone or in connection with imprisonment or fine. So a term of confinement, or a fine (or forfeiture of pay), in excess of the penalties authorized for civil offenders, may legally be adjudged by such courts. (Ibid., par. 8.)

The withdrawing by a disbursing officer of the Army, from an authorized depository, of public funds for a purpose not prescribed or authorized by law—as for personal use, or to pay claims not due from the United States or payable by such officer—being a form of embezzlement defined by section 5488, Revised Statutes, *held* prop-

a "All money lawfully in the hands of a public officer, and for which he is accountable, is money of the United States." (United States v. Watkins, 3 Cranch C. C., 441.)

b See cases in which embezzlements of this class were charged against officers of the Army in G. O., 1, War Department, 1861; G. C. M. O., 43, 86, Headquarters of Army, 1868; G. C. M. O., 21, War Department, 1871; G. C. M. O., 27, 34, *ibid.*, 1872; G. C. M. O., 81, *ibid.*, 1874; G. C. M. O., 52, Headquarters of Army, 1877.

obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures or advises the forging or counterfeiting of, any signature upon any writing or other paper, or uses, or procures or advises the use of, any such signature, knowing the same to be forged or counterfeited; or<sup>1</sup>

Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or intended for the military service thereof, knowingly delivers, or causes to be delivered, to any persons having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

Delivering less property than receipt calls for.

Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States, furnished or intended for the military service thereof, makes, or delivers to any person, such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United State; or<sup>1</sup>

Giving receipts without knowing truth of.

Who steals, embezzles, knowingly and willfully misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States, furnished or intended for the military service thereof; or<sup>1</sup>

Stealing, wrongfully selling, etc.

erly charged with embezzlement under the present article; and convictions of officers upon such a charge held authorized and legal.

But held that to constitute such embezzlement it is not necessary that there should have been a personal conversion of the funds or an intent to defraud. The object of the law is to provide a safeguard against the misuse and diverting from their appointed purpose of public moneys, and the intent of the offender, whether fraudulent or not, enters in no respect into the statutory crime. (a) If the withdrawal or application of the funds is simply one not prescribed or authorized by law, the offense is complete. (b) An absence, however, of criminal motive in the illegal act may be shown in mitigation of sentence in a military case.

So, held that it constituted no defense to a charge of an embezzlement of this class, though it might be shown in mitigation of punishment, that the officer had restored to the public depository the funds illegally withdrawn by him before a formal demand was made for the same. (Ibid., 57, par. 9.)

<sup>1</sup> It is a defense to a charge (under this article) of the embezzlement defined in section 5490, Revised Statutes, as consisting in a failure to safely keep public moneys by an officer charged with the safekeeping of the same, that the funds alleged to have been embezzled were, without fault on the part of the accused, lost in transportation, or fraudulently or feloniously abstracted. (Dig. Opin. J. A. Gen., 58, par. 10.)

Section 5495, Revised Statutes, provides that the refusal of any person charged with the disbursement of public moneys, promptly to transfer or disburse the funds in his hands, "upon the legal requirement of an authorized officer, shall be deemed, upon the trial of any indictment against such person for embezzlement, as prima facie evidence of such embezzlement." Applying this rule to a military case, it is clear that, in the event of such a refusal by a disbursing officer of the Army, the burden of proof would be upon him to show that his proceeding was justified, and that it would not be for the prosecution to show what had become of the funds. So, where an acting commissary of subsistence, on being relieved, failed to turn over the public moneys in his hands to his successor, or to his post commander when ordered to do so, or to produce such moneys, exhibit vouchers for the same, or otherwise account for their use, when so required by his department commander, held that he was properly charged with and convicted of embezzlement under this article. (Ibid., par. 11.)

Where a quartermaster used temporarily with his private carriage a pair of Government horses in his charge, held that he was not properly chargeable with embezzlement, but with the offense, under this article, of "knowingly applying to his

<sup>a</sup> See remarks of the Secretary of War in G. C. M. O. 34, War Department, 1872.

<sup>b</sup> Compare 14 Opin. Att. Gen., 473.

Buying public  
military prop-  
erty.

Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipments, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge. And if any person, being guilty of any of

own use and benefit property of the United States, furnished for the military service." (*Ibid.*, par. 12.)

The misappropriation specified in the article need not be an appropriation for the personal profit of the accused. The words "to his own use or benefit" qualify only the term "applies." (*Ibid.*, par. 13.)

In charging a stealing, embezzlement, misappropriation, etc., under this article, it is not necessary to allege that the funds or property were "furnished or intended for the military service;" it is sufficient if this fact appears from the evidence, and in most cases it will be inferable from the very nature of the property itself—as where, for example, the same consists of "quartermaster stores," "subsistence stores," "ordnance stores," etc. (*Ibid.*, par. 14.)

Where an officer of the Quartermaster Department used teams, tools, and other public property, in his possession as such officer, in erecting buildings, etc., for the benefit of an association, composed mainly of civilians, of which he was a member, *held* that he was properly chargeable with a misappropriation of property of the United States. And similarly *held* of a loaning by such an officer of public property (corn) to a contractor, for the purpose of enabling him to fill a contract made with the United States through another officer. (*a*) The fact that a practice exists in a post or other command of making a use (not authorized by regulation or order) of Government property for private purposes, or of loaning it in the prospect of a prompt return, can constitute no defense to a charge for such act as an offense under this article. Such practice, however, if sanctioned, though improperly, by superior authority, may be shown in evidence in mitigation of sentence. (*Ibid.*, 59, par. 15.)

The offense of stealing, indicated in the ninth paragraph of this article, consists in a larceny of "property of the United States furnished or intended for the military service." Except in time of war (see fifty-eighth article, *supra*, note 1) larceny of other property can be charged as a military offense only when cognizable under article 62, as prejudicing good order and military discipline. (*Ibid.*, par. 16.)

*Held* that under the concluding provision of this article (*b*) a soldier might be brought to trial for an offense of the class specified therein while held imprisoned, after dishonorable discharge, under a sentence imposed for another offense, provided, of course, the two years' limitation of article 103 had not expired. (*Ibid.*, par. 17.)

In view of the words "in the same manner," employed in the last paragraph of this article, considered in connection with the seventy-seventh article and section 1658, Revised Statutes, *held* that a volunteer or militia officer or soldier could be tried, after his discharge from the service, for a breach of this article committed while in the service, only by a court composed in the one case of other than regular officers and in the other of militia officers. (See seventy-seventh article.) (*Ibid.*, 60, par. 18.)

In view of the injunction and definition of sections 3622 and 5491, Revised Statutes, an officer who, in his official capacity, receives public money (not pay or an allowance), which he fails duly to account for to the United States, is guilty of embezzlement. The statute makes no distinction as to the sources from which the money is derived or the circumstances of its receipt. Nor is it material whether or not the officer actually converted it to his own use or what was the motive of his disposition of it. So *held* that an officer who, having claimed and exacted certain moneys from Government contractors for alleged liabilities on their part, failed to pay the same into the Treasury, or to duly account therefor, was guilty of embezzlement under the ninth paragraph of this article. (*Ibid.*, par. 19.)

Where an officer allowed to an enlisted man and paid to him, out of certain public funds consisting of the proceeds of a public sale of condemned quartermaster stores, an amount of 10 per cent on the total of such proceeds, as a compensation for the services of such man as auctioneer at the sale, *held* that such payment was illegal and unauthorized (*c*) and constituted an embezzlement of public money chargeable under the sixtieth or the sixty-second article. (*Ibid.*, par. 20.)

In charging embezzlement under this article, it is not necessary, if the fact sufficiently appears from other allegations, to aver in terms in the specification that

*a* Compare case in G. C. M. O., 46, Headquarters of Army, 1869.

*b* Whether this provision, in subjecting officers and soldiers discharged, mustered out, etc., and become civilians, to trial by court-martial in the same manner as if they were a part of the Army is constitutional is a question which is believed not to have been judicially passed upon. Probably originally inserted in the act of March 2, 1863 (from which the article is repeated) as in the nature of a war measure, it was in fact relied upon as giving jurisdiction in but a small number of cases even during the war, and since that period no case is known in which the exceptional jurisdiction conferred has been taken advantage of.

*c* So, also, *held* by the Second Comptroller of the Treasury in the same case. See opinion published in circular No. 3 (H. A.), 1894.

the offenses aforesaid, while in the military service of the United States, receives his discharge, or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

ART. 61. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service.<sup>1</sup>

Conduct unbecoming an officer and gentleman.  
61 Art. War.

the money or property was "furnished or intended for the military service of the United States." (Ibid., par. 21.)

Repeated false statements of the accused relative to the public moneys for which he was accountable are competent evidence going to sustain a charge of embezzlement under this article. (Ibid. 61, par. 22.)

The application or operation of this article is in no manner affected by the enactment of March 3, 1875, chapter 144, constituting embezzlement of public property a felony and making it triable by a United States court, such act being a purely civil statute. (Ibid., par. 23.)

Where an officer, for the purpose of obtaining the allowance of a fraudulent claim against the United States, willfully induced another to make to the United States a lease of premises for public use, containing a false and fraudulent statement, *held* that he was chargeable with an offense of the class specified in the fourth paragraph of this article. (Ibid., par. 24.)

<sup>1</sup>To constitute an offense under this article the conduct need not be "scandalous and infamous." These words, contained in the original article of 1775, were dropped in the form adopted in 1806. Nor is it essential that the act should compromise the honor of the officer. (a) It is only necessary that the conduct should be such as is at once disgraceful or disreputable and manifestly unbecoming both an officer of the Army and a gentleman. (b) An act, however, which is only slightly discreditable is not, in practice, made the subject of a charge under this article. The article, in making the punishment of dismissal imperative in all cases, evidently contemplates that the conduct, while unfitting the party for the society of men of a scrupulous sense of decency and honor, shall exhibit him as unworthy to hold a commission in the Army. (Dig. Opin. J. A. Gen., 61, par. 1.)

Knowingly making to a superior a false official report *held* chargeable under this article. So of a deliberately false official certificate as to the truth or correctness of an official voucher, roll, return, etc. So of any deliberately false official statement, written or verbal, of a material character. So where an officer caused the sergeant of the guard to enter in the guard book a false official report that he (the officer) had duly visited the guard at certain hours as officer of the day, when he had in fact been guilty of a neglect of duty in this particular, and thereupon himself signed such report and submitted it to his post commander, *held* that his conduct was chargeable as an offense under this article. (Ibid., 62, par. 2.)

The following acts, committed in a particular case, *held* to be offenses within this article: Preferring false accusations against an officer; attempting to induce an officer to join in a fraud upon the United States; attempt at subornation of perjury. (Ibid., par. 3.)

An attempt by corrupt means to induce an officer to give a vote, as a member of a post council of administration, in favor of a particular candidate for the tradership of the post, *held* properly charged under this article. (Ibid., par. 4.)

*Held* that a surgeon who appropriated to his own personal use and to that of his private mess food furnished by the Government for hospital patients was guilty of an offense under this article. (Ibid., par. 5.)

The violation by an officer of a promise or pledge on honor given by him to a superior, in consideration of the withdrawal by the latter of charges preferred for drunkenness, that he would abstain for the future, or for a certain period, from the use of intoxicating drink, *held* chargeable under this article. (Ibid., par. 6.)

Where an officer appeared in uniform at a theater drunk, and conducted himself in such a disorderly manner as to attract the attention of officers and soldiers who were present, as well as the audience generally; *held* that he was properly convicted of a violation of this article. (Ibid., par. 7.)

Engaging when intoxicated in a fight with another officer in the billiard room at a post trader's establishment in the presence of other officers and of civilians, *held* an offense within this article. So *held* of an engaging in a disorderly and violent altercation and fight with another officer in a public place at a military post in sight of officers and soldiers. So *held* of an exhibition of himself by an officer in a public place in a grossly drunken condition. (Ibid., 63, par. 8.)

Gambling with enlisted men in a public place *held* an offense within this article. And so of frequenting in uniform a disreputable gambling house and gambling with gamblers. (Ibid., par. 9.)

To justify a charge under this article it is not necessary that the act or conduct

a G. O. 25, Department of the Missouri, 1867.

b "An officer of the Army is bound by the law to be a gentleman." Attorney-General Cushing, 6 Opus., 417. See definitions or partial definitions of the class of offenses contemplated by this article in G. O. 45, Army of the Potomac, 1864; G. O. 29, Department of California, 1865; G. O. 7, Department of the Lakes, 1872; G. C. M. O. 69, Department of the East, 1870; G. C. M. O. 41, Headquarters of Army, 1879.

Crimes and disorders to prejudice of military discipline.

62 Art. War.

ART. 62. All crimes not capital, and all disorders and neglects, which officers and soldiers may be guilty of, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles of war, are to be taken cognizance of by a general, or a regimental, garrison, or field-officers' court-martial, according to the nature

of the officer should be immediately connected with or should directly affect the military service. It is sufficient that it is morally wrong and of such a nature that, while dishonoring or disgracing him as a gentleman, it compromises his character and position as an officer of the Army. (*Ibid.*, par. 10.)

Thus, though a mere neglect on the part of an officer to satisfy his private pecuniary obligations will not ordinarily furnish sufficient grounds for charges against him, yet where the debt has been dishonorably incurred—as where money has been borrowed under false promises or representations as to payment or security, or where the nonpayment has been accompanied by such circumstances of fraud, deceit, evasion, denial of indebtedness, etc., as to amount to dishonorable conduct—the continued nonpayment, in connection with the facts or circumstances rendering it dishonorable, may properly be deemed to constitute an offense chargeable under this article. (*a*) (*Ibid.*, par. 11.)

Where an officer, in payment of a debt, gave his check upon a bank, representing at the same time that he had funds there, when in fact, as he was well aware, he had none; *held* that he was amenable to a charge under this article. (*Ibid.*, 64, par. 12.)

Neglect or refusal to pay honest debts may constitute an offense under this article where so repeated or persistent as to furnish reasonable ground for inferring that the officer designs or desires to avoid or indefinitely defer a settlement. This especially where the debts are due to soldiers for money borrowed from or held in trust for them. (*Ibid.*, par. 13.)

An indifference on the part of an officer to his pecuniary obligations, of so marked and inexcusable a character as to induce repeated just complaints to his military commander or the Secretary of War by his creditors, and to bring discredit and scandal upon the military service, *held* to constitute an offense within the purview of this article. (*b*) (*Ibid.*, par. 14.)

Where certain officers of a colored regiment made a practice of loaning to men of the regiment small amounts of money, for which they charged and received in payment at the rate of two dollars for one at the next pay day; *held* that they were properly convicted of a violation of this article. (*Ibid.*, par. 15.)

Where an officer stationed in Utah was married there by a Mormon official to a female, with whom he lived as his wife, although having at the same time a legal wife residing in the States; *held* that he might properly be brought to trial by general court-martial for a violation of this article. So *held* of an officer who committed bigamy by publicly contracting marriage in the United States while having a legal wife living in Scotland whom he had abandoned. (*Ibid.*, par. 16.)

Abusing and assaulting his wife by an officer at a military post, in so public and marked a manner as to disturb the post and bring scandal upon the service, *held* chargeable as an offense under this article. (*Ibid.*, par. 17.)

The institution by an officer of fraudulent proceedings against his wife for divorce, and the manufacture of false testimony to be used against her in the suit, in connection with an abandonment of her and neglect to provide for her support, *held* to constitute "conduct unbecoming an officer and a gentleman" in the sense of this article. (*Ibid.*, 65, par. 18.)

According to the accepted principle of interpretation, by which articles of war enjoining a specific punishment or punishments are held to be in this particular both mandatory and exclusive, no sentence other than one of simple dismissal can legally be adjudged upon a conviction under this article. A sentence which adds to dismissal any other penalty or penalties, as disqualification for office, forfeiture of pay, imprisonment, etc., is valid and operative only as to the dismissal, and as to the rest should be formally disapproved as being unauthorized and of no effect. (*Ibid.*, par. 19.)

The following acts held to constitute offenses under this article: Fraudulently procuring a divorce from his wife, by an officer; failure on the part of an officer to support his wife and child, without adequate excuse therefor; procuring or allowing himself, by a retired officer, to be placed, by legal proceedings, under a conservator as a habitual drunkard. (*Ibid.*, par. 20.)

The use of abusive language toward a commanding officer may constitute an offense under this article. But, both as a matter of correct pleading and because the twentieth article authorizes a punishment less than dismissal, the language should be so particularized as to show that it constituted an offense more grave than the mere disrespect which is the subject of the latter article. A specification not thus

*a* Cases of officers made amenable to trial by court-martial, under this article, for the nonfulfillment of pecuniary obligations to other officers, enlisted men, post traders and civilians, are found in the following general orders of the War Department and Headquarters of Army: No. 87, of 1866; Nos. 3, 55, 64, of 1869; No. 15, of 1870; No. 17, of 1871; Nos. 22, 46, of 1872; No. 10, of 1873; Nos. 25, 50, 68, 82, of 1874; No. 25, of 1875; No. 100, of 1876; No. 46, of 1877.

*b* See, on the subject of these complaints, the circular issued originally from the War Department (A. G. O.) on February 8, 1872, in which the Secretary of War "declares his intention to bring to trial by court-martial," under the sixty-first article of war, "any officer who, after due notice, shall fail to quiet such claims against him."



and degree of the offense, and punished at the discretion of such court.<sup>1</sup>

That fraudulent enlistment and the receipt of any pay or allowance thereunder, is hereby declared a military offense and made punishable, by a court-martial, under the 62 Article of War. *Sec. 2, act of July 27, 1892 (27 Stat. L., 277).*

setting forth and characterizing the epithets or words employed will be subject to a motion to make definite or strike out. (*Ibid.*, par. 21.)

The mere acceptance by an officer of compensation from private parties (civilians) whom, by permission of his superior, he assists in a private undertaking, though it may be an indelicate act, is not an offense under this article. Of the propriety of such conduct an officer must judge for himself. (*Ibid.*, par. 22.)

It is no defense whatever to a charge under this article that between the date of the refusal by the United States to pay the assignee of a duplicated voucher and the date of the arraignment of the officer or of the service of the charges the money due has been paid, or somehow secured or made good to the assignee, or that he has been induced to withdraw or suspend his claim against the officer. (*a*) (*Ibid.*, par. 25.)

*Held* that a continued neglect, without adequate excuse, to satisfy a pecuniary obligation long overdue, after specific assurances given of speedy payment, was a dishonorable act constituting an offense under this article. (*b*) (*Ibid.*, par. 26.)

<sup>1</sup> The word "crimes" in this article, distinguished as it is from "neglects" and "disorders," means military offenses of a more serious character than these, including such as are also civil crimes, as homicide, robbery, arson, larceny, etc. "Capital" crimes (i. e., crimes capitally punishable), including murder, or any grade of murder made capital by statute, can not be taken cognizance of by courts-martial under this article. (As to the jurisdiction of courts-martial in cases of murder, etc., in time of war, see art. 58, *supra*, note.) A crime which is in fact murder, and capital by statute of the United States or of the State in which committed, can not be brought within the jurisdiction of a court-martial under this article by charging it as "manslaughter, to the prejudice," etc., or simply as "conduct to the prejudice," etc. (*c*) If the specification or the proof shows that the crime was murder and a capital offense, the court should refuse to take jurisdiction, or to find or sentence. If it assume to do so, the proceedings should be disapproved as unauthorized and void. (*Dig. Opin. J. A. Gen.*, p. 67, par. 1.)

The term "to the prejudice of good order and military discipline" qualifies, according to the accepted interpretation, the word "crimes" as well as the words "disorders and neglects." Thus, the crime of larceny (sometimes charged as "theft" or "stealing") is held chargeable under this article when it clearly affects the order and discipline of the military service. Stealing, for example, from a fellow-soldier or from an officer (or stealing of public money or other public property where the offense is not more properly a violation of article 60), is generally so chargeable. And so of any other crime (not capital) the commission of which has prejudiced military discipline, as, for example, manslaughter (or homicide not amounting to murder) of a soldier; assault with intent to kill a fellow-soldier; forgery of the name of a disbursing or other military officer to a Government check or draft, or forgery of an officer's name to a check on a bank (and this whether or not anything was in fact lost by the Government or the bank or officer); forgery in signing the name of a fellow-soldier to a certificate of indebtedness to a sutler, or to an order on a paymaster; embezzlement or misappropriation of the property of an officer or soldier. (*Ibid.*, par. 2.)

*Held* that for an officer to print and publish to the Army a criticism upon an official report made by another officer in the course of his duty to a common superior, charging that such report was erroneous and made with an improper and interested motive, was gravely unmilitary conduct, to the prejudice of good order and military discipline. An officer who deems himself wronged by an official act of another officer should prefer charges against the latter or appeal for redress to the proper superior authority. He is not permitted to resort to any form of publication of his strictures or grievances. So *held* that for an officer to publish or allow to be published in a newspaper of general circulation charges and insinuations against a brother officer, by which his character for courage and honesty is aspersed and he is held up to odium and ridicule before the Army and community, was a highly unmilitary proceeding and one calling for a serious punishment upon a conviction under this article, and this whether or not the charges as published were true. (*Ibid.*, 69, par. 5.)

The following offenses have been held properly charged or chargeable under this article as disorders or neglects "to the prejudice of good order and military discipline": Drunkenness or drunken and disorderly conduct, at a post or in public, committed by a soldier or officer when not "on duty," and when the act (in the case of an officer) does not more properly fall within the description of article 61. Escape from military confinement or custody, where not amounting to desertion. Breach of arrest, where not properly chargeable under article 65. Malingering. Disclosing a finding or

<sup>a</sup> See the remarks of the reviewing authority in the cases published in G. C. M. O. 88 of 1880 and 56 of 1893.

<sup>b</sup> See *Fletcher v. U. S.*, 26 C. Cls. R., 541, 502; *U. S. v. Fletcher*, 148 U. S., 84, 91; *Swain v. U. S.*, 28 Ct. Cls., 173, 230.

<sup>c</sup> See this opinion, as given in an important case, adopted by the Secretary of War in his action on the same published in G. C. M. O. 3, War Department, 1871; also the similar rulings in G. C. M. O. 28, Department of Texas, 1875; G. O. 14, Department of Dakota, 1868; G. O. 104, Army of the Potomac, 1862.



Retainers of  
camp.  
63 Art. War.

ART. 63. All retainers to the camp, and all persons serving with the armies of the United States in the field,

sentence of a court-martial in contravention of the oath prescribed in article 84 or 85. Refusing to testify when duly required to attend and give evidence as a witness before a court-martial. Joining with other inferior officers of a regiment in a letter to the colonel asking him to resign. Neglecting, by a senior officer "present for duty" with his regiment, to assume the command of the same when properly devolved upon him, and allowing such command to be exercised by a junior. Culpable malpractice by a medical officer in the course of his regular military duty. Colluding with bounty brokers in procuring fraudulent enlistments to be made and bounties to be paid thereon. Violations, by an officer, of paragraph 587, Army Regulations of 1895, in bidding in and purchasing, through another party, public property sold at auction by himself as quartermaster; also in purchasing subsistence stores, ostensibly for domestic use, but really for purposes of traffic. (Violations, indeed, of Army Regulations in general are properly chargeable under this article as neglects or disorders to the prejudice of good order and military discipline.) Causing, by a quartermaster, troops to be transported upon a steamer known by him to be unsafe. Paying money due under a contract (for military supplies) to a party to whom, with the knowledge of the accused, the contract had been transferred in contravention of section 3737, Revised Statutes. Inciting, by an officer, another officer to challenge him to fight a duel. Assuming, by a soldier, to be a corporal in the recruiting service, and as such enlisting recruits and obtaining board and lodging for himself and recruits without paying for same. Procuring, by a soldier, whisky from the post trader by forging an order for the same in the name of a laundress. Breach of faith, by a soldier, in refusing to pay the post trader for articles obtained on credit upon orders on him which had been guaranteed or approved by the company commander upon the condition that the amounts should be paid on the next pay day. Gambling by officers or soldiers under such circumstances as to impair military discipline (where the conduct, in the case of an officer, does not rather constitute an offense under article 61). Striking a soldier, or using any unnecessary violence against a soldier, by an officer. (*Ibid.*, 69, par. 6.)

The following acts or offenses have been held to be not properly chargeable under this article: A mere breach of the peace committed by a soldier (while absent alone and at a distance from his post) (*a*) in a street of a city, and in violation of a municipal ordinance. Pecuniary transactions between enlisted men of a culpable character, but in their private capacity and not directly affecting the service or impairing military discipline. Speculating and gambling in stocks by a disbursing officer, the proper performance of whose military duty was not affected. (*But recommended* that he be relieved from the duty of disbursing public money.) Reenlisting by the procurement of the recruiting officer after having been discharged for a disability still continuing, the act being in good faith and the alleged offense being committed before the party could be said to have fully come into the service. (*Ibid.*, 71, par. 7.)

A crime, disorder, or neglect, cognizable under this article, may be charged either by its name simply as "larceny," "drunkenness," "neglect of duty," etc., or by its name with the addition of the words "to the prejudice of good order and military discipline," or simply as "conduct to the prejudice of good order and military discipline," or as "violation of the sixty-second article of war." It is immaterial in which form the charge is expressed, provided the specification sets forth facts constituting an act prejudicial to good order and military discipline. Whenever the charge and specification taken together make out a statement of an act clearly thus prejudicial, etc., the pleading will be regarded as substantially sufficient under this general article. (*Ibid.*, 72, par. 8.)

A charge of "conduct to the prejudice," etc., with a specification setting forth merely trials and convictions of the accused for previous offenses, is not a pleading of an offense under this article, or of any military offense. So of a charge of "habitual drunkenness to the prejudice," etc., with a specification setting forth instances in which the accused has been sentenced for acts of drunkenness. Such charges, indeed, are in contravention of the principle that a party shall not be twice tried for the same offense. So a specification under the charge "conduct to the prejudice," etc., which sets forth not a distinct offense but simply the result of an aggregation of similar offenses, is insufficient in law. Where the specifications to such a charge, in a case of an officer, set forth that the accused was "frequently" drunk, "frequently" absented himself without authority from his command, etc., *held* that these specifications were properly struck out by the court on the motion of the accused. In such a case the only correct pleading is a general charge under this article, with specifications setting forth, each separately, some particular and specific instance of offense. (*Ibid.*, 72, par. 9.)

*Held* that a specification alleging homicide, but not adding "with malice aforethought," or in terms to that effect, was a pleading of manslaughter only and thus within this article. (*Ibid.*, 73, par. 10.)

Whether acts committed against civilians are offenses within this article is a question to be determined by the circumstances of each case, and in regard to which no general rule can be laid down. If the offense be committed on a military reservation or other premises occupied by the Army, or in its neighborhood, so as to be, so to speak, in the constructive presence of the Army; or if committed by an officer or soldier while on duty, particularly if the injury is done to a member of the community whom the offender is specially required to protect; or if committed in the presence of other soldiers, or while the offender is in uniform; or if the offender uses his military position or that of a military superior for the purpose of intimidation or other unlawful influence or object, the offense will in general properly be regarded as an act prejudicial to good order and military discipline and cognizable by a court-martial under this article. The judgment on the subject of a court of

*a* Offenses committed by a soldier while on furlough will not in general so directly prejudice military discipline as to render him amenable to trial by court-martial.

though not enlisted soldiers, are to be subject to orders, according to the rules and discipline of war.<sup>1</sup>

military officers, experts as to such cases, confirmed by the proper reviewing commander, should be reluctantly disturbed. (*Ibid.*, par. 11. See, also, *MANUAL FOR COURTS-MARTIAL*, p. 16, par. 7.)

The following *held* instances of offenses cognizable under this article: Neglect on the part of an officer of engineers to oversee the execution of a contract for a public work placed under his charge, the due fulfillment of such charge being a military duty; (a) a public criticism in a newspaper by an officer of a case which had been investigated by a court-martial and was awaiting the action of the President; assuming, by an officer, to copyright as owner, and thus asserting the exclusive right to publish, in an abridged form, the Infantry Drill Regulations, property of the United States, and the formal official publication of which had already been announced in orders by the Secretary of War; selling condemned military stores, by an officer, without due notice, and not suspending the sale when better prices could have been obtained by deferring it, in violation of paragraph 692, Army Regulations; misconduct by a soldier at target practice, consisting of breaches of the published instructions, false statements or markings with a view fraudulently to increase a score, etc.; violation by a soldier of a pledge given to his commanding officer to abstain from intoxicating liquors, on the faith of which a previous offense was condoned; bigamy by a soldier, committed at a military post. (*Ibid.*, par. 12.)

The following acts *held* not to be cognizable as offenses under this article: A resort to civil proceedings by suit against a superior officer on account of acts done in the performance of military duty; but *held* that, if the verdict should be for the defendant, and it should appear that the suit was without probable cause and malicious, a charge under this article might perhaps be sustainable. The mere loaning of money at usurious or excessive rates of interest by a noncommissioned officer to privates, unless it should clearly be made to appear that such conduct promoted desertions or other results prejudicial to the discipline of the command. (But as the practice in this case had been long continued, and was clearly demoralizing, *advised* that the noncommissioned officer be summarily discharged.) The becoming infected by a soldier with a disease unfitting him for service, as the result of vicious conduct. The living in adultery by a soldier at Plattsburg village, where he was permitted to reside, situate about a mile from Plattsburg Barracks. *Advised* in this case that the offender be turned over to the civil authorities for trial under the laws of New York. (*Ibid.*, 74, par. 13.)

<sup>1</sup> The accepted interpretation of this article is that it subjects (in time of war) the classes of persons specified not only to military discipline and government in general, but also to the jurisdiction of courts-martial (upon the theory, probably, that they are thus made, for the time being, a part of the Army). Individuals, however, of the class termed "retainers to the camp," or officers' servants and the like, as well as camp followers generally, have rarely been subjected to trial in our service. For breaches of discipline committed by them the punishment has generally been expulsion from the limits of the camp and dismissal from employment. (*Dig. Opin. J. A. Gen.*, 75, par. 1.)

The discipline authorized by the article has mainly been applied to the description of "persons serving with the armies of the United States in the field"—that is to say, civilians serving in a quasi-military capacity in connection with troops, in time of war and on its theater. Thus, during the late war, civilians of the following classes were, in repeated cases, held amenable, under this article, to the military jurisdiction, and subjected to trial and punishment by courts-martial: Teamsters employed with wagon trains, watchmen, laborers, and other employees of the quartermaster, subsistence, engineer, ordnance, provost-marshal, etc., departments; ambulance drivers; telegraph operators; interpreters; guides; paymasters' clerks; veterinary surgeons; "contract" surgeons, nurses, and hospital attendants; conductors and engineers of railroad trains operated upon the theater of war for military purposes; officers and men employed on Government transports, etc. But the mere fact of employment by the Government pending a general war does not render the civil employee so amenable. The employment must be in connection with the army in the field and on the theater of hostilities. (*Ibid.*, par. 2.)

*Held* (June, 1863) that the force employed in the "ram fleet" on Western waters was properly a contingent of the Army rather than of the Navy, and accordingly that civilian commanders, pilots, and engineers employed upon such fleet during the war and before the enemy were persons serving with the armies in the field in the sense of this article, and therefore amenable to trial by court-martial. (*Ibid.*, 76, par. 3.)

Civil employees of the United States serving with the Army in the field during active warfare with hostile Indian tribes *held* amenable to trial by court-martial under this article. A civilian who acted as guide to a command operating in a hostile movement during an Indian war *held* so triable. (*Ibid.*, par. 4.)

The jurisdiction authorized by this article can not be extended to civilians employed in connection with the Army in time of peace, nor to civilians employed in such connection during the period of an Indian war, but not on the theater of such war. In view of the limited theater of Indian wars, this exceptional jurisdiction is to be extended to civilians, on account of offenses committed during such wars, with even greater caution than in a general war. (*Ibid.*, par. 5.)

Civilians can not legally be subjected to military jurisdiction by the authority of this article after the war (whether general or against Indians), pending which their offenses were committed, has terminated. The jurisdiction, to be lawfully exercised, must be exercised during the status belli. (*Ibid.*, par. 6.)

A civil employee of the United States in time of peace is most clearly not made<sup>a</sup> amenable to the military jurisdiction and trial by court-martial by the fact that he is employed in an office connected with the administration of the military branch of

<sup>a</sup> See *Runkle v. U. S.*, 19 C. Cls. R., 411, 412.

All troops subject to articles of war.

64 art. war.  
July 29, 1861, c. 25, s. 3, v. 12, pp. 281, 284; Mar. 2, 1863, c. 67, s. 1, v. 12 p. 696.

Arrest of officers accused of crimes.

65 Art. War.

Soldiers accused of crimes.

66 Art. War.

ART. 64. The officers and soldiers of any troops, whether militia or others, mustered and in pay of the United States, shall, at all times and in all places, be governed by the articles of war, and shall be subject to be tried by courts-martial.<sup>1</sup>

ART. 65. Officers charged with crime<sup>2</sup> shall be arrested and confined in their barracks, quarters, or tents, and deprived of their swords by the commanding officer. And any officer who leaves his confinement before he is set at liberty by his commanding officer shall be dismissed from the service.<sup>3</sup>

ART. 66. Soldiers charged with crimes shall be confined until tried by court-martial, or released by proper authority.<sup>4</sup>

the Government. Such employment does not make him a part of the military establishment, nor is his offense, however nearly it may affect the military service, "a case arising in the land forces" in the sense of article 5 of the amendments to the Constitution. So *held* (June, 1877) that a civilian clerk employed in time of peace in the office of the chief quartermaster at San Francisco was manifestly not amenable, under this article or otherwise, to trial by court-martial for the embezzlement or misapplication of Government funds appropriated for the Quartermaster Department. (a) And remarked that if this official could be made liable to such jurisdiction, all the male and female clerks employed in the War Department might upon the same principle be held thus amenable for offenses against the Government committed in connection with their duties. And so *held* in the case of a civilian clerk employed at Camp Robinson, Nebraska, charged with conspiring with contractors to defraud the United States, the post not being within the theater of any Indian war or hostilities pending at the period of the offense. (b) (*Ibid.*, 77, par. 7.)

*Held* (April, 1877) that superintendents of national cemeteries, being no part of the Army, but civilians (see section 4874, Revised Statutes), were clearly not amenable to military jurisdiction or trial under this article or otherwise. (c) (*Ibid.*, par. 8.)

<sup>1</sup> It is a general principle, confirmed by this article, that military offenses are not territorial (see Manual for Courts-Martial, p. 12). So *held* that an officer who exhibited himself in an intoxicated condition at a public ball in Mexico, though not present in any military capacity, was amenable for his offense to the jurisdiction of a court-martial in Texas. (Dig. Opin. J. A. Gen., 77. *Houston v. Moore*, 5 Wh., 20. See, also, note to par. 1307 *ante*.)

<sup>2</sup> The term "crime" is here employed in a general sense, referring to offenses of a military character, as well as to those of a civil character which are cognizable by court-martial. (d) An offense in violation of this article is only committed when an officer, confined in "close arrest" to his quarters, leaves the same without authority. A breach of a mere formal arrest, or of any arrest not accompanied by confinement to quarters, would be an offense not within this article, but under article 62. (Dig. Opin. J. A. Gen., 78, par. 1.)

Simply disobeying an order to proceed and report in arrest to a certain commander *held* not an offense chargeable under this article. (*Ibid.*, par. 2.)

<sup>3</sup> Where an officer in close arrest was permitted by his commanding officer to leave temporarily his confinement, *held* that his delaying his return for a brief period beyond the time fixed therefor did not properly constitute an offense under this article. (*Ibid.*, par. 3.)

Though any unauthorized leaving of his confinement by an officer in close arrest is, strictly, a violation of the article, it would seem, in view of the severe mandatory punishment prescribed, that an officer should not in general be brought to trial under the same unless his act was of a reckless or deliberately insubordinate character. (*Ibid.*, par. 4.)

It is no defense to a charge of breach of arrest in violation of this article that the accused is innocent of the offense for which he was arrested. (e) It is a defense, however, that, subsequently to the original confinement, the accused has been put on duty or allowed to go on duty, provided that, before the breach assigned, he has not been duly rearrested and reconfined. (f) (*Ibid.*, par. 5.)

The requirement of this article, that an offender "shall be dismissed," is held to be exclusive of any other punishment. A sentence of dismissal, with forfeiture of pay, is unauthorized and inoperative as to the forfeiture, and as to this should be disapproved. (*Ibid.*, 79, par. 6.) See sixty-first article. See also the title "Arrest and confinement" in the chapter entitled MILITARY TRIBUNALS.

<sup>4</sup> Soldiers held in military arrest, while they may be subjected to such restraint as may be necessary to prevent their escaping or committing violence, can not legally

<sup>a</sup> See the confirmatory opinion in this case of the Attorney-General of May 15, 1878, 16 Opins., 13.

<sup>b</sup> See opinion, to a similar effect, of the Attorney-General of June 15, 1878, 16 Opins., 48.

<sup>c</sup> See, to the same effect, the opinion of the Attorney-General referred to in note <sup>a</sup>.

<sup>d</sup> Compare *Wolton v. Gavin*, 16 Ad. & El., 66, 68; *Simmons*, sec. 360.

<sup>e</sup> Hough (Practice), 494.

<sup>f</sup> Hough (Precedents), 19.

ART. 67. No provost-marshal, or officer commanding a guard, shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States; provided the officer committing shall, at the same time, deliver an account in writing, signed by himself, of the crime charged against the prisoner.

Receiving prisoners.  
67 Art. War.

ART. 68. Every officer to whose charge a prisoner is committed shall, within twenty-four hours after such commitment, or as soon as he is relieved from his guard, report in writing, to the commanding officer, the name of such prisoner, the crime charged against him, and the name of the officer committing him; and if he fails to make such report, he shall be punished as a court-martial may direct.

Report of prisoners.  
68 Art. War.

ART. 69. Any officer who presumes, without proper authority, to release any prisoner committed to his charge, or suffers any prisoner so committed to escape, shall be punished as a court-martial may direct.<sup>1</sup>

Releasing prisoner without authority; escapes.  
69 Art. War.

ART. 70. No officer or soldier put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled.<sup>2</sup>

Duration of confinement.  
70 Art. War.

ART. 71. When an officer is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provisions of this article, may be tried,

Copy of charges and time of trial.  
July 17, 1862, c. 200, s. 11, v. 12, p. 595.  
71 Art. War.

be subjected to any punishment; the imposition of punishment upon soldiers while thus detained has been on several occasions emphatically denounced by department commanders. (a) (*Ibid.*, par. 1.)

The word "crimes," as used in this article, is construed to mean serious military offenses. So that a soldier will not properly be "confined" where not charged with one of the more serious of the military offenses—in other words, where charged only with an offense of a minor character. (*Ibid.*, par. 2.) See the title "Arrest and confinement" in the chapter entitled MILITARY TRIBUNALS.

<sup>1</sup>General Order 16 of 1895, fixing the maximum punishments, appoints different limits of punishment for willfully and for negligently allowing an escape as separate offenses. A charge for suffering an escape under this article should therefore indicate, in the specification, whether the act is alleged to be willful or negligent only. (*Ibid.*, par. 1.)

<sup>2</sup>Detaining soldiers in arrest for long and unreasonable periods, when it is practicable to bring them to trial, is arbitrary and oppressive, and in contravention both of the letter and spirit of this article. Whether the delay in any case is to be regarded as so far unreasonable as properly to subject the commander responsible therefor to military charges or a civil action must depend upon the circumstances of the situation and the exigencies of the service at the time. (b) Dig. Opin. J. A. Gen., 80. See the title "Arrest and confinement," in the chapter entitled MILITARY TRIBUNALS.

<sup>a</sup>See, for example, the remarks of such commanders in G. O. 23, Department of the East, 1863; G. O. 26, Department of California, 1866; G. O. 23, Department of the Lakes, 1870; G. O. 106, Department of Dakota, 1871. And compare remarks of Justice Story in *Steele v. Field*, 2 Mason, 516.

<sup>b</sup>Compare *Blake's Case*, 2 Maule & Sel., 428; *Bailey v. Warden*, 4 *ibid.*, 400.

whenever the exigencies of the service shall permit, within twelve months after such release from arrest.<sup>1</sup>

Who may appoint general courts-martial.

May 29, 1830, v. 4, p. 417; July 5, 1884, v. 23, p. 121.  
72 Art. War.

ART. 72. Any general officer commanding an army, a territorial division or a department, or colonel commanding a separate department, may appoint general courts-martial whenever necessary. But when any such commander is the accuser or prosecutor of any officer under his command, the court shall be appointed by the President, and its proceedings and sentence shall be sent directly to the Secretary of War, by whom they shall be laid before the President for his approval or orders in the case.<sup>2</sup> *Act of July 5, 1884 (23 Stat. L., 121).*

Who may appoint general courts-martial in times of war.

Dec. 24, 1861, v. 12, p. 330.  
73 Art. War.

ART. 73. In time of war the commander of a division, or of a separate brigade of troops, shall be competent to appoint a general court-martial. But when such commander is the accuser or prosecutor of any person under his command, the court shall be appointed by the next higher commander.<sup>3</sup>

<sup>1</sup> Though an officer, in whose case the provisions of this article in regard to service of charges and trial have not been complied with, is entitled to be released from arrest, he is not authorized to release himself therefrom. If he be not released in accordance with the article, he should apply for his discharge from arrest, through the proper channels, to the authority by whose order the arrest was imposed, or other proper superior. (Dig. Opin. J. A. Gen., 80, par. 1.)

The term "within ten days thereafter" held to mean after his arrest. (Ibid., par. 2.)

Held a sufficient compliance with the requirement as to the service of charges to have served a true copy of the existing charges and specifications, though the list of witnesses appended to the original charges was omitted, and though the charges themselves were not in sufficient legal form, and were intended to be amended and redrawn. (Ibid., 81, par. 3.)

The fact that cases of officers put in arrest "at remote military posts or stations" are excepted from the application of the article does not authorize an abuse of the power of arrest in these cases. And where, in such a case, an arrest, considering the facilities of communication with the department headquarters and other circumstances, was in fact unreasonably protracted without trial, held that the officer was entitled to be released from arrest upon a proper application submitted for the purpose. (Ibid., par. 4.) See also note 1 to article 69, supra.

<sup>2</sup> See the title "Constitution and composition of general courts-martial," in the chapter entitled MILITARY TRIBUNALS.

Prior to the amendment of this article by the act of July 5, 1884, a colonel commanding a department was not authorized, as such, to convene a general court; otherwise, however, of a colonel assigned by the President to the command of a department according to his brevet rank of brigadier or major general. (Dig. Opin. J. A. Gen., 82, par. 4.)

The objection that the convening commander was the "accuser" or "prosecutor" of the accused, being one going to the legal constitution of the court, may be raised before the court at any stage of its proceedings. (Or it may be taken to the reviewing officer with a view to his disapproving the proceedings, or may be made to the President, after the approval and execution of the sentence, with a view to having the same declared invalid, or to the obtaining of other appropriate relief.) Regularly, however, the objection, if known or believed to exist, should be taken at or before the arraignment. If the objection is not admitted by the prosecution to exist, the accused is entitled to prove it like any other issue. (Ibid., 84, par. 8.)

The provision of this article (and of article 73) that when the convening commander is "accuser or prosecutor" the court shall be convened by the President or "next higher commander," being expressly restricted to general courts, has, of course, no application to regimental or garrison courts. (But see Summary court.) The same principle, however, will properly be applied to proceedings before these courts if it can be done without serious embarrassment to the service. (Ibid., par. 9.)

A general court-martial, convened by the division commander (a major-general) duly acting as department commander in the absence of the regular department commander, is legally convened by a general officer commanding a department in the sense of this article. (Ibid., par. 10.)

The mere fact that a general court-martial is convened by a department commander does not make such commander an "accuser or prosecutor" in the sense of this article. (a) A department commander is not an "accuser or prosecutor" when, upon information of misconduct duly laid before him, he orders the acting judge-advocate of the department or the colonel commanding the regiment to proceed to bring the offender to trial, this being a part of his due and regular supervision and command. (Ibid., par. 11.)

<sup>3</sup> See note 1, to article 72, supra.

ART. 74. Officers who may appoint a court-martial shall be competent to appoint a judge-advocate for the same.<sup>1</sup>

Judge-advocates.  
74 Art. War.

That whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court. *Sec. 2, act of July 27, 1892 (27 Stat. L., 278).*

Sec. 2, July 27, 1892, v. 27, p. 278.

ART. 75. General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen when that number can be convened without manifest injury to the service.<sup>2</sup>

Composition of general courts-martial.  
75 Art. War.

ART. 76. When the requisite number of officers to form a general court-martial is not present in any post or detachment, the commanding officer shall, in cases which require the cognizance of such a court, report to the commanding officer of the department, who shall, thereupon, order a court to be assembled at the nearest post or department at which there may be such a requisite number of officers, and shall order the party accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

When requisite number not at a post.  
76 Art. War.

ART. 77. Officers of the Regular Army shall not be competent to sit on courts-martial to try the officers or soldiers of other forces, except as provided in Article 78.<sup>3</sup>

Regular officers; on what courts may sit.  
77 Art. War.

ART. 78. Officers of the Marine Corps, detached for service with the Army by order of the President, may be associated with officers of the Regular Army on courts-martial for the trial of offenders belonging to the Regular Army, or to forces of the Marine Corps so detached; and in such cases the orders of the senior officer of either corps, who may be present and duly authorized, shall be obeyed.<sup>3</sup>

Marine and Regular Army officers associated on courts.  
78 Art. War.  
June 30, 1834, c. 132, s. 2, v. 4, p. 713.

ART. 79. Officers shall be tried only by general courts-martial, and no officer shall, when it can be avoided, be tried by officers inferior to him in rank.<sup>4</sup>

Officers triable by general courts-martial.  
79 Art. War.

<sup>1</sup> See the title "Judge-advocate," in the chapter entitled MILITARY TRIBUNALS.

<sup>2</sup> Where, in the course of a trial, the number of the members of a general court-martial is reduced by reason of absence, challenge, or the relieving of members, the court may legally proceed with its business so long as five members, the minimum quorum, remain; otherwise where the number is thus reduced below five. (Dig. Opin. J. A. Gen., 87, par. 3.)

While a number of members less than five can not be organized as a court or proceed with a trial, they may perform such acts as are preliminary to the organization and action of the court. Less than five members may adjourn from day to day, and where five are present and one of them is challenged, the remaining four may determine upon the sufficiency of the objection. (Ibid., par. 4.)

A court reduced to four members, and thereupon adjourning for an indefinite period, does not dissolve itself. In adjourning it should report the facts to the convening authority and await his orders. He may at any time complete it by the addition of a new member or members and order it to reassemble for business. (Ibid., 88, par. 5.)

Where a court, though reduced by the absence of members, operation of challenges, etc., to below five members, yet proceeds with and concludes the trial, its further proceedings, including its finding and sentence (if any), are unauthorized and inoperative. (Ibid., par. 6.)

<sup>3</sup> See note 1, article 72, supra.

<sup>4</sup> Whether the trial of an officer by officers of an inferior rank can be avoided or not is a question not for the accused or the court, but for the officer convening the

**Field officers' courts.** ART. 80. In time of war a field officer may be detailed in every regiment, to try soldiers thereof for offenses not capital; and no soldier, serving with his regiment shall be tried by a regimental<sup>1</sup> garrison court-martial when a field officer of his regiment may be so detailed.<sup>2</sup>

**Regimental courts.** ART. 81. Every officer commanding a regiment or corps shall, subject to the provisions of article eighty, be competent to appoint, for his own regiment or corps, courts-martial, consisting of three officers, to try offenses not capital.<sup>3</sup>

**Garrison courts.** ART. 82. Every officer commanding a garrison, fort, or other place, where the troops consist of different corps, shall, subject to the provisions of article eighty, be competent to appoint, for such garrison or other place, courts martial, consisting of three officers, to try offenses not capital.<sup>4</sup>

**Jurisdiction of field officers, regimental, and garrison courts.** ART. 83. Regimental and garrison courts-martial, and field-officers detailed to try offenders, shall not have power to try capital cases or commissioned officers, or to inflict a fine exceeding one month's pay, or to imprison or put to hard labor any non-commissioned officer or soldier for a longer time than one month.<sup>4</sup>

**Oath of members of courts-martial.** ART. 84. The judge-advocate shall administer to each member of the court, before they proceed upon any trial, the following oath, which shall also be taken by all members of regimental and garrison courts-martial: "You, A B, do swear that you will well and truly try and determine, according to evidence, the matter now before you, between the United States of America and the prisoner to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your

court; and his decision (as indicated by the detail itself as made in the convening order) upon this point, as upon that of the number of members to be detailed, is conclusive. (See seventy-fifth article.) An officer, therefore, can not successfully challenge a member because merely of being of a rank inferior to his own. (See eighty-eighth article.) (Dig. Opin. J. A. Gen., 89, par. 1.)

The statement sometimes added in orders convening courts-martial to the effect that "no officers other than those named can be detailed without injury to the service" is as superfluous and unnecessary for the purpose of excusing the detailing of officers junior to the accused as it is for accounting for the fact that less than the maximum number have been selected for the court. (See seventy-fifth article.) (Ibid., par. 2.)

At the opening of a trial by court-martial it was objected by the accused that nine of the thirteen members as detailed were his inferiors in rank, and that the detailing of such inferiors could have been "avoided" without prejudice to the service. Held that the objection was properly overruled by the court. Whether such a detail "can be avoided" is a question to be determined by the convening authority alone, and one upon which his determination is conclusive. (a) (Ibid., par. 3.)

<sup>1</sup> The word or omitted from the roll.

<sup>2</sup> See the title "Field officers' court," in the chapter entitled MILITARY TRIBUNALS.

<sup>3</sup> See the title "Regimental courts-martial," in the chapter entitled MILITARY TRIBUNALS.

<sup>4</sup> See the titles "Field officers' courts" and "The summary court," in the chapter entitled MILITARY TRIBUNALS.



understanding, and the custom of war in like cases; and you do further swear that you will not divulge<sup>1</sup> the sentence of the court until it shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice,<sup>2</sup> in a due course of law. So help you God."<sup>3</sup> *Act of July 27, 1892* (27 Stat. L., 278).

ART. 85. When the oath has been administered to the members of a court-martial, the president of the court shall administer to the judge-advocate, or person officiating as such, an oath in the following form:

Oath of judge-  
advocate.  
85 Art. War.

"You, A B, do swear that you will not disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof, as a witness, by a court of justice, in due course of law; nor

<sup>1</sup>The only case which has been met with in which the members of a court-martial have been required to disclose their votes by the process of a civil court is that of *In re Mackenzie*, 1 Pa. Law J. R., 356, in which the members of a naval court-martial were compelled, against their objections, to state their votes as given upon the findings at a particular trial.

<sup>2</sup>In the present corresponding British article the words "or a court-martial" are added after the words "a court of justice."

<sup>3</sup>This article makes the administering to the court of the form of oath thereby prescribed an essential preliminary to its entering upon a trial. (a) Until the oath is taken as specified, the court is not qualified "to try and determine." The arraignment of a prisoner and reception of his plea—which is the commencement of the trial—before the court is sworn, is without legal effect. The article requires that the oath shall be taken not by the court as a whole, but by "each member." Where, therefore, all the members are sworn at the same time, the judge-advocate will preferably address each member by name, thus: "You, A B, C D, E F, etc., do swear," etc. A member added to the court, after the members originally detailed have been duly sworn, should be separately sworn by the judge-advocate in the full form prescribed by the article; otherwise he is not qualified to act as a member of the court. A member who prefers it may be affirmed instead of sworn. (See section 1, Revised Statutes.) (Dig. Opin. J. A. Gen., 96, par. 1.)

The members are sworn to try and determine the matter before them at the time of the administering of the oath. In a case, therefore, where, after the court had been sworn and the accused had been arraigned and had pleaded, an additional charge, setting forth a new and distinct offense, was introduced into the case, and the accused was tried and convicted upon the same, *held* that as to this charge the proceedings were fatally defective, the court not having been sworn to try and determine such charge. (b) *Ibid.*, p. 97, par. 2.

It is a departure from the engagement expressed in the body of the oath—to try and determine according to evidence, and administer justice according to the Articles of War, etc.—for a court-martial to determine a case either upon personal knowledge of the facts possessed by the members and not put in evidence, or according to the private views of justice of the members independently of the provisions of the code. (c) (*Ibid.*, par. 3.)

Where the vote of each member of the court upon one of several specifications upon which the accused was tried was stated in the record of trial, *held* that such statement was a clear violation of the oath of the court, though it did not affect the validity of the proceedings or sentence. A statement in the record of trial to the effect that all the members concurred in the finding or in the sentence, while it does not vitiate the proceedings or sentence, is a direct violation of the oath prescribed by this article. (See sixty-second article.) (*Ibid.*, par. 4.)

The disclosing of the finding and sentence to a clerk by permitting him to remain with the court at the final deliberation and enter the judgment in the record is a violation of the oath and a grave irregularity, though one which does not affect the validity of the proceedings or sentence. (*Ibid.*, 98, par. 5.)

The words "a court of justice" are deemed to mean a civil or criminal court of the United States, or of a State, etc., and not to include a court-martial. A case can hardly be supposed in which it would become proper or desirable for a court-martial to inquire into the votes or opinions given in closed court by the members of another similar tribunal. (*Ibid.*, par. 6.)

<sup>a</sup>See in this connection, G. O. 15, H. A., 1880, which, in directing that judge-advocates shall be detailed for regimental and garrison, as well as general, courts-martial, rescinds G. O. 49 of 1871, prescribing a special form of oath for the former courts, and thus provides for their taking the due and regular oath recited in article 84.

<sup>b</sup>See G. C. M. O. 39, War Department, 1867; G. O. 13, Northern Department, 1864.  
<sup>c</sup>Compare G. O. 21, Department of the Ohio, 1866; G. C. M. O. 41, Department of Texas, 1874.



divulge the sentence of the court to any but the proper authority, until it shall be duly disclosed by the same. So help you God."

Contempts of court. ART. 86. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures, in its presence, or who disturbs its proceedings by any riot or disorder.<sup>1</sup>

Behavior of members. ART. 87. All members of a court-martial are to behave with decency and calmness.

Challenges by prisoner. ART. 88. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.<sup>2</sup>

<sup>1</sup> The power of a court-martial to punish, under this article, being confined practically to acts done in its immediate presence, (a) such a court can have no authority to punish, as for a contempt, a neglect by an officer or soldier to attend as a witness in compliance with a summons. (b) (*Ibid.*, 98, par. 1.)

A court martial has none of the common-law power to punish for contempt vested in the ordinary courts of justice, but only such authority as is given it by this article. Thus, *held* that a court-martial would not be authorized to punish, as for a contempt, under this article (or otherwise), a civilian witness duly summoned and appearing before it, but, when put on the stand, declining (without disorder) to testify. (*Ibid.*, 99, par. 2.). See, also, 18 Opin. Atty. Gen., 278.

Where a contempt within the description of this article has been committed, and the court deems it proper that the offender shall be punished, the proper course is to suspend the regular business, and after giving the party an opportunity to be heard, explain, etc., (c) to proceed, if the explanation is insufficient, to impose a punishment, resuming thereupon the original proceedings. The action taken is properly summary, a formal trial not being called for. Close confinement in quarters or in the guardhouse during the trial of the pending case, or forfeiture of a reasonable amount of pay, has been the more usual punishment. Instead of proceeding against a military person for a contempt in the mode contemplated by this article, the alternative course may be pursued of bringing him to trial before a new court on a charge for a disorder under article 62. (d) (*Ibid.*, par. 3.)

<sup>2</sup> This article authorizes the exercise of the right of challenge before all courts except field officers' courts and summary courts. These courts are not subject to be challenged, because, being composed of but one member, there is no authority provided which is competent to pass upon the validity of the challenge. (*Dig. Opin. J. A. Gen.*, 99, par. 1.)

It is ordinarily a sufficient ground of challenge to a member that he is the author of the charges and is a material witness in the case. The mere fact that he is to be a witness is not in general to be held sufficient. (*Ibid.*, 100, par. 2.)

The mere fact that a member signed or formally preferred the charges is not sufficient ground of objection, since he may have done so ministerially or by the order of a superior. But where a member, upon investigation or otherwise, has initiated or preferred the charges as accuser, or as prosecutor has caused them to be brought to trial, he is properly subject to challenge. Thus, that a member had originated and preferred the charge for a disobedience of his own order was held good cause of challenge. So, in a case of a trial for an assault upon an officer, the fact that the officer upon whom the assault was committed, and who was the prosecuting witness, was a member of the court was held to constitute complete cause of challenge to him as member. (*Ibid.*, par. 3.)

That a member is the regimental or company commander of the accused does not per se constitute sufficient ground of challenge. But such ground may exist where the commander has preferred the charges or where the relations between him and the accused have been such as to give rise to a presumption of prejudice. (*Dig. Opin.*, J. A. Gen., 99, par. 4.)

Where a member, before the trial, had expressed an opinion, based upon a knowledge of the facts, that the accused would be convicted whichever way he might plead, *held* that he had clearly prejudged the case and that the court should have sustained an objection taken to him by the accused, although upon being challenged he declared that he was without prejudice. (e) (*Ibid.*, par. 5.). In *re Bird*, 2, Sawyer, 33.

A member, on being challenged for prejudice, declared that he did not consider

a It was held by the Secretary of War in the case of Lieutenant-Colonel Backenstos (G. O. 14, War Department, 1850) that a court-martial had, under this article, no power to punish its own members.

b As to the power of courts of inquiry to punish for contempt, see one hundred and fifteenth article and note.

c See G. C. M. O. 37, Fourth Military District, 1868.

d Compare Samuel, 634; Simmons, section 434. The latter course has not unfrequently been adopted in our practice.

e See this opinion as adopted by the President in G. C. M. O. 66, Headquarters of Army, 1879.

ART. 89. When a prisoner, arraigned before a general court-martial, from obstinacy and deliberate design, stands mute, or answers foreign to the purpose, the court may proceed to trial and judgment, as if the prisoner had pleaded not guilty. Prisoner standing mute.  
89 Art. War.

ART. 90. The judge-advocate, or some person deputed by him, or by the general or officer commanding the Army, detachment, or garrison, shall prosecute in the name of the United States, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading question to any of the witnesses, and to any question to the prisoner, the answer to which might tend to criminate himself. Judge-advocate, prosecutor, and counsel for prisoner.  
90 Art. War.

the accused (an officer) a gentleman, and would not associate with him, and that he had stated so; but he added at the same time that he was not prejudiced for or against him. *Held*, especially as one of the charges was "conduct unbecoming an officer and a gentleman," that the challenge was improperly overruled by the court. (*Ibid.*, par. 6.)

It is not good ground of challenge to a member that he is junior in rank to the accused, nor is it sufficient ground that the member will gain a step or "file" in the line of promotion if the accused is dismissed. It is, however, a sufficient cause of challenge to a member that if the accused (an officer) be convicted and sentenced to be dismissed, the member will be forthwith entitled to promotion. (*Ibid.*, 101, par. 7.)

*Held* sufficient ground of challenge to a member of a court-martial that he had previously taken part in an investigation of the same case before a court of inquiry, though such court did not express a formal opinion. (*Ibid.*, par. 8.)

*Held* good ground of challenge to a member of a court-martial in a case of alleged theft by a soldier that such member had been a member of a previous court of inquiry which had investigated the case and fixed the misappropriation of the property upon the accused. (*Ibid.*, par. 9.)

*Held* that the members of a court-martial who had composed a previous court by which the same accused had been tried for the same act, though under a different charge, were all subject to be set aside on challenge. (*Ibid.*, par. 10.)

It is not necessary (though usual and proper) for a member to withdraw from the court room on being challenged and pending the deliberation on the objection. (*Ibid.*, par. 11.)

Courts should be liberal in passing upon challenges, but should not entertain an objection which is not specific, or allow one upon its mere assertion by the accused, without proof and in the absence of any admission on the part of the member. (a) A positive declaration by the challenged member to the effect that he has no prejudice or interest in the case will, in general, in the absence of material evidence in support of the objection, justify the court in overruling it. (*Ibid.*, 101, par. 12.)

Where, before arraignment, the accused (an officer), without having personal knowledge of the existence of ground of challenge to a member, had credible hearsay information of its existence, *held* that he should properly have raised the objection before the members were sworn, and that the court was not in error in refusing to allow him to take it at a subsequent stage of the trial. (*Ibid.*, 102, par. 13.)

The fact that a sufficient cause of challenge exists against a member, but, through ignorance of his rights, is not taken advantage of by the accused, or if asserted is improperly overruled by the court, can affect in no manner the validity in law of the proceedings or sentence, though it may sometimes properly furnish occasion for a disapproval of the proceedings, etc., or a remission in whole or in part of the sentence. (b) (*Ibid.*, par. 14.)

The article imposes no limitation upon the exercise of the right of challenge other than that "more than one member shall not be challenged at a time." Thus while

a See G. C. M. O. 66, War Department, 1875. The challenge the allowance of which by the court in General Twigg's case was disapproved in G. O. 4, War Department, 1858, was simply a general objection to the member by the accused on account of "some unpleasant circumstances growing out of their official relations," no specific allegation of bias being made and the member himself expressly disclaiming any feeling of prejudice.

b See opinion of the Attorney-General of January 19, 1878 (15 Opins., 432), in which the opinion, expressed by the Judge-Advocate-General in the most recent of the cases upon which this paragraph is based—that the fact that one of the charges upon which the accused was convicted was preferred by a member of the court who also testified as a witness on the trial (but who, though clearly subject to objection, was not challenged by the accused) could not affect the validity of the sentence of dismissal after the same had been duly confirmed—is concurred in by the Attorney-General. And to a similar effect see *Keyes v. U. S.*, 15 C. Cls. R., 532.

In G. C. M. O. 88, Department of Dakota, 1878, the point is noticed that where a challenge interposed by the accused has been improperly disallowed a subsequent plea of guilty is not to be treated as a waiver of the advantage to which he may be entitled by reason of the improper ruling.

Administra-  
tion of oaths.  
Sec. 4, July 27  
1892, v. 27, p. 278.

That judge-advocates of departments and of courts-martial, and the trial officers of summary courts, are hereby authorized to administer oaths for the purposes of the administration of military justice, and for other purposes of military administration. *Sec. 4, act of July 27, 1892 (27 Stat L., 278).*

Depositions.  
Mar. 3, 1863, c.  
75, s. 27, v. 12, p.  
736.  
91 Art. War.

ART. 91. The depositions of witnesses residing beyond the limits of the State, Territory, or district in which any military court may be ordered to sit, if taken on reasonable notice to the opposite party and duly authenticated, may be read in evidence before such court in cases not capital.<sup>1</sup>

the panel, or the court as a whole, is not subject to challenge, yet all the members may be challenged provided they are challenged separately. The article contains no authority for challenging the judge-advocate. (See Judge-Advocate). (*Ibid.*, par. 15.)

The court of itself can not excuse a member in the absence of a challenge. A member not challenged but considering himself disqualified, can be relieved only by application to the convening authority. (*Ibid.*, 103, par. 16.)

An accused challenged the entire court on the ground that the convening officer was "accuser." *Held* properly overruled; the array can not be challenged at military law. The article declares that "the court \* \* \* shall not receive a challenge to more than one member at a time." (*Ibid.*, par. 17.)

A court-martial can not relieve or "excuse" a member except upon a challenge duly interposed and sustained under this article. The fact that a member has been absent from the court for several days and has not heard the testimony meanwhile taken constitutes no legal ground for excusing him by the court. (*Ibid.*, par. 18.)

An accused objected to a member on the ground that some time before he had had a disagreement with the member and thought that he "might be prejudiced." The member declared that he was conscious of no prejudice whatever, but that, on the contrary, his feelings toward the accused were friendly. *Held* that the court erred in sustaining the challenge. (*Ibid.*, par. 19.)

The accused were Indian scouts, charged with mutiny. Some of the members of the court, though disclaiming any prejudice against the accused personally, were aware that they were present at the outbreak, and were fully apprised, from their own personal presence or knowledge of the circumstances, that the mutiny, which had involved homicide, constituted a most aggravated offense of the class. *Held* that, as these members could scarcely avoid applying their impressions to the accused when shown to be connected with the disorder, they would fairly have been subject to objection as triers. (*Ibid.*, par. 20.)

A mere general opinion in regard to the impropriety of acts such as those charged against the accused, unaccompanied by any opinion as to his guilt or innocence on the charges, is not a sufficient ground of objection under this article. (*Ibid.*, par. 21.)

Whether the trial of an officer by officers of an inferior rank can be avoided or not, is a question not for the accused or the court, but for the officer convening the court; and his decision (as indicated by the detail itself as made in the convening order) upon this point, as upon that of the number of members to be detailed, is conclusive. An officer, therefore, can not successfully challenge a member because, *merely*, of being of a rank inferior to his own. (*Ibid.*, 89, par. 1.)

<sup>1</sup>A deposition can not be read in evidence in a capital case, (a) as in a case of a violation of article 21, or a case of a spy, or one of desertion in time of war; otherwise in a case of desertion in time of peace. Nor is the deposition admissible of a witness who resides in the State, etc., within which the court is held, except by consent. (b) (*Dig. Opin. J. A. Gen.*, 104, par. 1.)

Where the evidence of high officers or public officials—as a department commander, or chief of a bureau of the War Department—is required before a court-martial, the same, especially if the court is assembled at a distant point, should be taken by deposition, if authorized under this article. Such officers should not be required to leave their public duties to attend as witnesses, except where their depositions will not be admissible, and where the case is one of special importance and their testimony is essential. The Secretary of War should not be required to attend as a witness, or to give his deposition in a military case, where the chief of a staff corps or other officer, in whose bureau the evidence sought is matter of record, or who is personally acquainted with the facts desired to be proved, can attend or depose in his stead. (*Ibid.*, par. 2.)

The party at whose instance a deposition has been taken can not be admitted, against the objection of the other party, to introduce only such parts of the deposition as are favorable to him or as he may elect to use; he must offer the deposition in evidence as a whole or not offer it at all. (*Ibid.*, par. 3.)

If the party at whose instance a deposition has been taken decides not to put it in, it may be read in evidence by the other party. One party can not withhold a deposition (duly taken and admissible under this article) against the consent of the other. (*Ibid.*, 105, par. 4.)

*Held* that the deposition of a witness residing in a foreign country, and taken

<sup>a</sup> As to the meaning of "capital," see sixty-second article, note 1, and eighty-third article, note 2, *supra*.

<sup>b</sup> Note the remarks of the reviewing authority in G. C. M. O. 102, Department of the East, 1871; G. C. M. O. 1, Division of South, 1875.

ART. 92. All persons who give evidence before a court-martial shall be examined on oath, or affirmation, in the following form: "You swear (or affirm) that the evidence

Oath of witness.  
92 Art. War.

before a qualified person, as an American consul, would be admissible in evidence under this article equally with the deposition of a resident of the United States. (Ibid., par. 5.)

Where the judge-advocate offered in evidence, on the part of the prosecution, a deposition which proved to have been given by a person other than the one to whom the interrogatories were addressed, and the accused objected to its introduction, but the objection was overruled by the court, *held* error; the fact that the intended deponent was but the agent, in the transaction inquired about, of the person who actually furnished the deposition not being sufficient to make such deposition admissible except by consent of parties. (a) (Ibid., par. 6.)

This article, in any case within its terms and in which its conditions are complied with, entitles either party to have depositions taken and "read in evidence." The court alone has no power to decide that a deposition, where legal and material, shall not be taken. (Ibid., par. 7.)

A deposition, introduced by either party, which is not "duly authenticated," should not be admitted in evidence by the court, although the other party may not object. A deposition *held* irregular and inadmissible where it failed to show that the officer by whom it was taken was authorized to take it, or that he was qualified to administer the oath to the witness. (Ibid., par. 8.)

The article, in specifying that the deposition, to be admissible in evidence, shall be "duly authenticated," makes it essential that the same shall be sworn to before, i. e., taken under an oath administered by, an official competent to administer oaths for such purpose. A deposition should now be sworn to before one of the military officers specified in the act of July 27, 1892, section 4, or if such an officer be not accessible, by a civil official competent to administer oaths in general. An official empowered to administer oaths only for a certain special purpose or purposes can not legally qualify a witness whose deposition is sought to be taken under this article. (Ibid., par. 9.)

The so-called depositions ("affidavits or depositions") referred to in paragraph 771, Army Regulations, are entirely distinct from the depositions provided for in article 91, being merely sworn ex-parte statements used for the purpose of settling questions of "properly accountability." The regulation has no application whatever to depositions proper of the class authorized by this article. (See General Order 20 of 1894, amending this regulation.) (Ibid., 106, par. 10.)

A court-martial has no power to qualify or authorize a commanding officer, or any other officer or person, to take a deposition or administer an oath. (Ibid., par. 11.)

A deposition is not in general satisfactory evidence for purposes of personal identification by description, and should not be resorted to for the identification of an accused where reliable oral testimony can be obtained. (Ibid., par. 12.)

The depositions of civilian witnesses, while their taking generally involves less expense than would the personal attendance of the parties, are usually quite sufficient as testimony, except when the purpose of the evidence is to personally identify the accused before the court. (Ibid., par. 13.)

The judge-advocate, in forwarding the interrogatories for a deposition, should transmit with them a subpoena (in duplicate) requiring the witness to appear at a stated place and date before a certain person who is to take the deposition. Particulars not ascertained may be left blank to be supplied by the officer or person by whom the subpoena is served. When the deposition has been duly taken and returned, the judge advocate should transmit to the witness (or to some officer, etc., for him) the usual certificate of attendance (accompanied by a copy of the convention order), the duration of the attendance to be ascertained from the deposition. (Ibid., 463, par. 36.)

The officer detailed to have a deposition taken, i. e., to see to its being taken, should, before serving the subpoena, complete it, if necessary, by inserting the name and official designation of the notary (or other official having authority to administer the oath) before whom it is to be taken, and the date on which and the place where it is proposed to take it. And when the deposition has been duly taken, he should certify it as so taken, and transmit it in a sealed package to the president of the court. (Ibid., par. 15.)

Civilian witnesses who duly give their depositions under this article are entitled to the same fees and allowances as are witnesses who duly attend the court in person. (See Circular No. 9 (H. A.). 1883.) The voucher, to enable such a witness to obtain his dues, should simply set forth the facts as to his service, substituting, for the usual statement in regard to attendance before the court, a statement that he duly attended as a witness at a certain time and place, and duly gave his deposition before a certain official named. (Ibid., par. 16.)

*Held* that duly attending by a civilian witness before a duly authorized official to give a deposition, to be used in evidence on a military trial, was to be regarded as practically equivalent to attending a court-martial, and that the deponent was entitled to be paid the usual allowances (i. e., the same as those of witnesses appearing before the court) out of the regular appropriation for the "compensation of witnesses attending before courts-martial." (Ibid., 759, par. 36.)

*Held* that a sum of \$3, disbursed by an officer ordered to procure a deposition to be taken, as a payment to a justice of the peace before whom the deposition was given, would legally be reimbursed, on the presentation of a proper voucher, by the Quartermaster Department, out of the appropriation for the expenses of witnesses before courts-martial. (Ibid., 107, par. 17.)

A deposition duly taken, under the article, on the part of the prosecution, is not subject to objection by the accused and can not be rejected by the court merely

you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."<sup>1</sup>

Continuances.  
93 Art. War.

ART. 93. A court-martial shall, for reasonable cause, grant a continuance to either party, for such time, and as often, as may appear to be just: *Provided*, That if the prisoner be in close confinement, the trial shall not be delayed for a period longer than sixty days.<sup>2</sup>

upon the ground that it is declared in the sixth amendment to the Constitution that "in all criminal prosecutions the accused shall enjoy the right \* \* \* to be confronted with the witnesses against him." This constitutional provision has no application to courts-martial; the "criminal prosecutions" referred to are prosecutions in the United States civil courts. (*Ibid.*, par. 18.)

The provisions of sections 866-870, Revised Statutes, relate to depositions in the United States courts and have no application to courts-martial, which are no part of the United States judiciary. *Held*, therefore, that there was no authority whatever for prescribing, as was done in General Order 2, Department of Texas, 1888, that the laws of Texas in regard to the taking of depositions should govern depositions in military courts held within that State. (*Ibid.*, par. 19.)

In military law an accused party can not be deemed to be entitled to have a witness summoned from a distance whose military or administrative duties are of such a character that they can not be left without serious prejudice to the public interests. Article VI of the amendments to the Constitution, declaring that the accused shall be entitled "to be confronted with the witnesses against him," applies only to cases before the United States courts. Thus where the offense charged is not capital, and a deposition may therefore legally be taken under the ninety-first article of war, the Secretary of War will not in general authorize the personal attendance at the place of trial of a witness whose office or duty makes it necessary or most important that he should remain elsewhere. (*Ibid.*, 752, par. 10.)

An accused party at a military trial can rarely be entitled to demand the attendance, as a witness, of a chief of a staff corps, much less that of the President or Secretary of War, especially as some minor official can almost invariably furnish the desired facts. If, however, the testimony of one of these officials be found to be necessary or most desirable, and the same can not legally be taken by deposition, the court, if convened at a distance, may properly be adjourned to Washington or other convenient point, in order that the witness may be enabled to attend without detriment to the public interests. (*Ibid.*, par. 11.)

<sup>1</sup> This article prescribes a single specific form of oath to be taken by all witnesses. The Constitution, however (article I of amendments), has provided that Congress shall make no law prohibiting the free exercise of religion. Where, therefore, the prescribed form is not in accordance with the religious tenets of a witness, he should be permitted to be sworn according to the ceremonies of his own faith or as he may deem binding on his conscience. (a) (*Dig. Opin. J. A. Gen.*, 107, par. 1.)

The article does not prescribe by whom the oath shall be administered. By the custom of the service it is administered by the judge-advocate. (And see now the provision of the act of July 27, 1892, section 4.) When the judge advocate himself takes the witness stand, he is properly sworn by the president of the court. (*Ibid.*, 108, par. 2.)

A witness who has once been sworn and has testified is not required to be resworn on being subsequently recalled to the stand by either party. The reswearing, however, of such a witness will not affect the legal validity of the proceedings or sentence. (*Ibid.*, par. 3.)

<sup>2</sup> In making an application for a continuance or postponement under this article, on account of the absence of a witness, the form of affidavit prescribed in paragraph 887 of the Army Regulations should in general be substantially observed. But while the court may refuse the application if this regulation be not followed, it may, in its discretion, refrain from insisting that the same be strictly complied with, and accept a modified form. (b) It should, however, in all cases require that the desired evidence appear or be shown to be material, and not merely cumulative, (c) and that to await its production will not delay the trial for an unreasonable period. It should also, in general, before granting the continuance, be assured that the absence of the witness is not owing to any neglect on the part of the applicant. This feature, however, will not be so much insisted upon in military as in civil cases. (d) (*Ibid.*, par. 1.)

Where "reasonable cause" is, in the judgment of the court, exhibited, the party is entitled to some continuance under the article. (e) A refusal, indeed, by the court

a See 1 Greenl. Ev., sec. 371; O'Brien, 260.

b It is not the practice of courts-martial to admit counter affidavits from the opposite party as to what the absent witness would testify. And as to the civil practice, see *Williams v. State*, 6 Nebraska, 334.

c Compare *People v. Thompson*, 4 Cal., 238; *Parker v. State*, 55 Miss., 414.

d A military accused can not be charged with laches in not procuring the attendance at his trial of a witness who is prevented from being present by superior military authority. Thus in a case in G. O. 63, Department of Dakota, 1872, an accused soldier was held entitled to a continuance till the return of material witnesses then absent on an Indian expedition.

e It would properly be so held upon common-law principles, even independently of the positive terms of the article. In *Rex v. D'Eon*, 1 W. Black., 514, it was declared by Lord Mansfield that "No crime is so great, no proceeding so instantaneous, but that, upon sufficient grounds, the trial may be put off."

ART. 94. Proceedings of trials shall be carried on only between the hours of eight in the morning and three in the afternoon, excepting in cases which, in the opinion of the officer appointing the court, require immediate example.<sup>1</sup>

Hours of sitting.  
94 Art. War.

That whenever a court-martial shall sit in closed session the judge-advocate shall withdraw, and when his legal advice or his assistance in referring to recorded evidence is required it shall be obtained in open court. *Sec. 2, act of July 27, 1892 (27 Stat. L., 278).*

Judge-advocate to withdraw from closed sessions.  
Sec. 2, July 27, 1892, v. 27, p. 278.

to grant such continuance will not invalidate the proceedings, but, if the accused has thus been prejudiced in his defense, may properly constitute good ground for disapproving the sentence, (a) or for mitigating or partially remitting the punishment. (*Ibid.*, 109, par. 2.)

Where an accused soldier, by reason of his regiment having been moved a long distance since his arrest, was separated at his trial from certain witnesses material to his defense, held that he was entitled to a reasonable continuance for the purpose of procuring their attendance or their depositions. (*Ibid.*, par. 3.)

That the charges and specifications upon which an accused is arraigned differ in a material particular from those contained in the copy served upon him before arraignment may well constitute a sufficient ground for granting him additional time for the preparation of his defense. (See Charge.) (*Ibid.*, par. 4.)

Where after arraignment a material and substantial amendment is allowed by the court to be made by the judge-advocate in a specification, the effect of which amendment is to necessitate or make desirable a further preparation for his defense on the part of the accused, a reasonable postponement for this purpose will in general properly be granted by the court. (*Ibid.*, par. 5.)

It is in general good ground for a reasonable continuance that the accused needs time to procure the assistance of counsel, (b) if it is made to appear that such counsel can probably be obtained within the time asked, and that the accused is not chargeable with remissness in not having already provided himself with counsel. (*Ibid.*, 110, par. 6.)

This article is imperative upon the point that no proceedings of trials shall be carried on before 8 o'clock a. m. or after 3 o'clock p. m., except in the class of cases specifically indicated. Where, therefore, the record shows affirmatively that any particular material proceeding of the trial was had by the court before 8 or after 3 o'clock, and sets forth no authority for the same from the convening officer (such as the usual direction or permission in the convening order that the court "will" or "may sit without regard to hours"), such proceeding must be held unauthorized and of no legal effect. (c) And if the proceeding, thus futile, was one necessary to the completeness of the trial, or otherwise important, it should be repeated, or taken de novo, within legal hours. (*Ibid.*, 110, par. 1.)

The article, however, does not require that the record shall show in terms that the hours indicated were observed. It is proper, indeed, and the best practice, to state the hour of each meeting and adjournment; but where no such entry appears in the proceedings, the same will not be invalidated, but, in the absence of evidence to the contrary, it will be presumed, in favor of the record, (d) that the court did not sit except between the prescribed hours. (*Ibid.*, 111, par. 2.)

The entertaining by the court, after 3 o'clock p. m., of a motion to adjourn would not be unauthorized, such a motion not being properly a proceeding of a trial in the sense of the article. (*Ibid.*, par. 3.)

Where the record of a court-martial, which set forth no authority for sitting beyond the hours prescribed in this article, contained the statement that "the court, having no further business, adjourned at 11.15 p. m. sine die," held that the proceedings were legally inoperative. (*Ibid.*, par. 4.)

Where neither in the order convening a court-martial nor in any supplementary order is authority given for its sitting beyond or outside of the hours prescribed by this article, and its record affirmatively shows that the trial or a portion of the trial of a case was not conducted within such hours, the proceedings are unauthorized and inoperative, and the sentence, if any, is nullified, unless by a reconvening of the court the defect may be remedied. Thus, where it appeared from the record that a court-martial, on a certain day, without any authority given it, sat and completed a trial after 3 o'clock p. m., advised that the error might be corrected by continuing the trial anew, within legal hours, from the point reached at 3 o'clock on that day; and recommended that the court be reconvened for this purpose. (*Ibid.*, par. 5.)

<sup>1</sup> Note the different reasons for this enactment assigned by Attorney-General Speed (11 Opins., 141) and Coppée (p. 50), and see, on this point, Hough (Practice), 377.

<sup>a</sup> See G. C. M. O. 35, War Department, 1867; G. C. M. O. 128, Headquarters of Army, 1876; G. O. 24, Department of Arizona, 1874.

<sup>b</sup> See G. C. M. O. 25, War Department, 1875.

<sup>c</sup> In some cases where the trials have, without express authority, been commenced before 8 a. m. or continued after 3 p. m., the entire proceedings and sentences have been disapproved as fatally defective. See G. O. 2, Department of the South, 1873; G. O. 94, Department of the Gulf, 1864; S. O. 281, Department of Washington, 1861. Strictly, however, it is only the proceeding had during the inhibited interval that is unauthorized and inoperative, and the irregularity involved may in general be remedied as indicated in the text.

<sup>d</sup> As to the presumption in favor of the regularity of judicial proceedings, see 1 Greenl. Ev., sec. 19.

Order of vot- ART. 95. Members of a court-martial, in giving their  
ing. 95 Art. War. votes, shall begin with the youngest in commission.

Sentence of death. ART. 96. No person shall be sentenced to suffer death  
96 Art. War. except by the concurrence of two-thirds of the members of a general court-martial, and in the cases herein expressly mentioned.<sup>1</sup>

Penitentiaries. ART. 97. No person in the military service shall, under  
July 16, 1862, c. the sentence of a court-martial, be punished by confine-  
190, ss. 1, 4, v. 12, ment in a penitentiary, unless the offense of which he may  
p. 589. be convicted would, by some statute of the United States,  
97 Art. War. or by some statute of the State, Territory, or District in which such offense may be committed, or by the common law, as the same exists in such State, Territory, or District, subject such convict to such punishment.<sup>2</sup>

<sup>1</sup> Though it has sometimes been viewed otherwise, it is deemed quite clear upon the terms of the present article that it is not necessary to the legality of a death sentence that two-thirds of the court should have concurred in the finding as well as the sentence. (a) Further, in the absence of any requirement to that effect in the article, it is not deemed essential to the validity of the sentence that the record should state the fact that two-thirds of the court concurred therein. The practice, however, has been to add such a statement. (Dig. Opin. J. A. Gen., 112, par. 1.)

A sentence of death imposed by a court-martial, upon a conviction of several distinct offenses, will be authorized and legal if any one of such offenses is made capitally punishable by the Articles of War, although the other offenses may not be so punishable. (Ibid., par. 2.)

A court-martial, in imposing a death sentence, should not designate a time or place for its execution, such a designation not being within its province, but pertaining to that of the reviewing authority. If it does so designate, this part of the sentence may be disregarded, and a different time or place fixed by the commanding general. (Ibid., par. 3.)

Where a death sentence imposed by a court-martial has been directed by the proper authority to be executed on a particular day, and this day, owing to some exigency of the service, has gone by without the sentence being executed, it is competent for the same authority or his proper superior, to name another day for the purpose, the time of its execution being an immaterial element of this punishment. (b) (Ibid., par. 4.)

<sup>2</sup> This article by necessary implication prohibits the imposition of confinement in a penitentiary as a punishment for offenses of a purely or exclusively military character—such as desertion, for example. (c) (Dig. Opin. J. A. Gen., 113, par. 1.)

A sentence of penitentiary confinement in a case of a purely military offense is wholly unauthorized and should be disapproved. Effect can not be given to such a sentence by commuting it to confinement in a military prison or to some other punishment which would be legal for such offense. Nor in a case of such an offense can a severer penalty, as death, be commuted to confinement in a penitentiary. (Ibid., par. 2.)

Nor can penitentiary confinement be legalized as a punishment for purely military offenses by designating a penitentiary as a "military prison" and ordering the confinement there of soldiers sentenced to imprisonment on conviction of such offenses. (Ibid., par. 3.)

An offense charged as "conduct to the prejudice of good order and military discipline," which, however, is in fact a larceny, (d) embezzlement, violent crime, or

a Compare McNaghten, 120.

b It was held by the Supreme Court in *Coleman v. Tennessee* (7 Otto, 519, 520) that a soldier who had been convicted of murder and sentenced to death by a general court-martial in May, 1865, but the execution of whose sentence had been meanwhile deferred, by reason of his escape and the pendency of civil proceedings in his case, might at the date of the ruling (October term, 1878) "be delivered up to the military authorities of the United States, to be dealt with as required by law."

More recently (May, 1879, 16 Opins., 349) it has been held in this case by the Attorney-General that the death sentence might legally be executed notwithstanding the fact that the soldier had meanwhile been discharged from the service, such discharge, while formally separating the party from the Army, being viewed as not affecting his legal status as a military convict. But, in view of all the circumstances of the case, it was recommended that the sentence be commuted to imprisonment for life or a term of years.

c See G. O. 4, War Department, 1867; also the action taken in cases in the following general orders: G. O. 21, Department of the Platte, 1866; G. O. 21, *ibid.*, 1871; G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 34, 35, 43, 46, 72, 73, Department of the Missouri, 1870.

d In a case of larceny the court should inform itself as to whether the value of the property stolen be not too small to permit of penitentiary confinement for the offense under the local law. See G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 63, Department of the Platte, 1872.



ART. 98. No person in the military service shall be punished by flogging, or by branding, marking, or tattooing on the body.

c. 316, s. 2, v. 17, p. 261.

Flogging.  
Aug. 5, 1861, c.  
54, s. 3, v. 12, p.  
317; June 6, 1872,  
98 Art. War.

ART. 99. No officer shall be discharged or dismissed from the service, except by order of the President, or by sentence of a general court-martial; and in time of peace

Discharge and  
dismissal of offi-  
cers.  
99 Art. War.  
July 13, 1866, c.  
176, s. 5, v. 14, p.  
92.

other offense made punishable with penitentiary confinement by the law of the State, etc., may legally be visited with this punishment. (Ibid., 114, par. 4.)

The term "penitentiary" as employed in this article has reference to civil prisons only, as the penitentiary of the United States or District of Columbia at Washington, the public prisons or penitentiaries of the different States, and the "penitentiaries erected by the United States" (see section 1892, Revised Statutes) in most of the Territories. The military prison at Leavenworth is not a penitentiary in the sense of the article. The term "State (or State's) prison" in a sentence is equivalent to penitentiary. (Ibid., par. 5.)

A military prisoner duly sentenced or committed to a penitentiary becomes subject to the government and rules of the institution. (Ibid., par. 6.)

Where a soldier is sentenced to be confined in a penitentiary, the proper reviewing authority may legally designate for the execution of the punishment any State or Territorial penitentiary within his command. Where there is no such penitentiary available for the purpose, or desirable to be resorted to, he will properly submit the case to the Secretary of War for the designation of a proper penitentiary. (Ibid., par. 7.)

A court-martial, in imposing by its sentence the punishment of confinement in a penitentiary, is not required to follow the statute of the United States or of the State, etc., as to the term of the confinement. It may adjudge, at its discretion, a less or a greater term than that affixed by such statute to the particular offense. At the same time the court will often do well to consult the statute, as indicating a reasonable measure of punishment for the offense. (Ibid., par. 8.)

Where a court-martial specifically sentences an accused to confinement in a "military prison," he can not legally be committed to a penitentiary, although such form of imprisonment would be authorized by the character of his offense. But where a sentence of confinement is expressed in general terms, as where it directs that the accused shall be confined "in such place or prison as the proper authority may order," or in terms to such effect, *held* that the same may, under this article, legally be executed by the commitment of the party to a penitentiary, to be designated by the reviewing officer or Secretary of War, provided, of course, the offense is of such a nature as to warrant this form of punishment. (Ibid., par. 9.)

*Held* that penitentiary confinement could not legally be adjudged upon a conviction of a violation of the twenty-first article, alleged in the specification to have consisted in the lifting up of a weapon (a pistol) against a commanding officer and discharging it at him with intent to kill. By charging the offense under this article the Government elected to treat it as a purely military offense, subject only to a military punishment. So, upon a conviction of joining in a mutiny, in violation of article 22, *held* that a sentence of confinement in a penitentiary would not be legal although the mutiny involved a homicide, set forth in the specification as an incidental aggravating circumstance. To have warranted such a punishment in either of these cases the Government should have treated the act as a "crime," and charged and brought it to trial, as such, under article 62. (Ibid., 115, par. 10.)

Where the act is charged as a crime under article 62, and charge and specification taken together show an offense punishable with confinement in a penitentiary by the law of the locus of the crime, the sentence may legally adjudge such a punishment. So *held*, in a case where charge and specification together made out an allegation of perjury under section 5392, Revised Statutes. (Ibid., par. 11.)

"Obtaining money under false pretenses" is punishable by confinement in a penitentiary by the laws of Arizona. A sentence of court-martial imposing this punishment, on conviction of an offense of this description committed in this Territory, charged as a crime under article 62, *held* authorized by article 97. (Ibid., par. 12.)

A conviction of a larceny of property of such slight value as not to authorize this punishment under the local law would not warrant a sentence of confinement in a penitentiary. In a case of larceny the court should inform itself as to whether the value of the property stolen be not too small to permit of penitentiary confinement for the offense under the law of the State, etc. (a) (Ibid., par. 13.)

A punishment of confinement in a penitentiary, where legal, may be mitigated to confinement in a military prison or at a military post. (Ibid., 116, par. 15.)

A discharged soldier, serving a sentence of confinement in a State or Territorial penitentiary, still remains under military control, at least so far as that his sentence may, by competent military authority, or by the President, be remitted, or may be mitigated—as, for example, to confinement in a military prison or at a military post. Where the place of confinement is a State or Territorial penitentiary which is within a department command, the commander may legally remit or mitigate the sentence. But the President may limit this authority by excluding such penitentiaries from the department command. (But now the function of remitting the sentences of discharged soldiers confined in penitentiaries is, by orders, restricted to the President. Paragraph 916, Army Regulations of 1895, Circular No. 5 (H. A.), 1888.) (Ibid., par. 16.)

<sup>a</sup> See G. O. 44, Eighth Army Corps, 1862; G. C. M. O. 63, Department of the Platte, 1872.



no officer shall be dismissed, except in pursuance of the sentence of a court-martial, or in mitigation thereof.<sup>1</sup>

<sup>1</sup> Dismissal by Executive order is quite distinct from dismissal by sentence. The latter is a *punishment*; the former is *removal from office*. (a) The power to dismiss, which, as being an incident to the power to *appoint* public officers, had been regarded since 1789 as vested in the President by the Constitution, (b) was, for the first time in 1866 (by the act of July 13 of that year, reenacted in the second clause of the present ninety-ninth article of war and in section 1229, Revised Statutes), expressly divested by Congress in so far as respects its exercise in time of peace. (c) By the statute law it is now authorized only in time of war. During the late war it was exercised in a great number of cases, sometimes for the purpose of summarily ridding the service of unworthy officers, sometimes in the form of a discharge or muster-out of officers, whose services were no longer required. The distinction between this species of dismissal and dismissal by sentence is illustrated by the fact that the former has, with the sanction of legal authority, been repeatedly ordered in cases where a court-martial has previously *acquitted* the officer of the very offenses on account of which the summary action has been resorted to. (d) (Dig. J. A. Gen., p. 369, par. 1.)

The Executive, in summarily dismissing an officer, can not at the same time deprive him of pay due. Nor can the right of an officer to his pay, for any period prior to a summary dismissal ordered in his case, be divested by dating back of the order of dismissal. Such an order can not be made to relate back so as to affect the status or rights of the officer as they existed before the date of the taking effect of the dismissal. (Ibid., par. 2.)

A summary dismissal "by order of the Secretary of War" is in law the act of the President. (e) (Ibid., 370, par. 3.)

A department or army commander can have, of course, no authority to summarily dismiss or discharge an officer from the military service. But where, in a case of a regular officer, this authority was in fact exercised, and the President, treating his office as vacant, proceeded to fill the vacancy by a new appointment, *held* that he had made the dismissal his own act and legalized the same. (f) So where (in 1863) an officer of volunteers was dismissed by the order of an army commander, which was never ratified in terms by the President, but a successor, appointed to the vacancy by the governor of the State, was accepted and mustered in by the United States, *held* (in 1880) that the dismissal was to be regarded as having been substantially ratified and legalized. So an unauthorized dismissal, by order of a regular officer, may be in effect made operative by a subsequent appointment and confirmation of a successor, as in *Blake's Case*, post, sec. 12. (Ibid., par. 4.)

A summary dismissal of an officer does not properly take effect until the order of dismissal or an official copy of the same is delivered to him, or he is otherwise officially notified of the *fact* of the dismissal. (Ibid., par. 5.)

*Held* that it could not affect the operation of an order summarily dismissing an officer as "second lieutenant" that, before its being communicated to him by being promulgated to the regiment, he had become by promotion a first lieutenant. (Ibid., par. 6.)

A dismissal of an officer by Executive order does not operate to disqualify him for reappointment to military office, or for appointment to civil office under the United States. (Ibid., par. 7.)

There can be no *revocation* of a duly executed order of dismissal, however unmerited or injudicious the original act may be deemed to have been. For, distinct as dismissal by order is, in its *nature*, from dismissal by sentence (see section 1, ante), the *effect* of the proceeding in divesting the officer is the same in each case. An officer dismissed by an order, though his dismissal may have involved no disgrace, is assimilated to an officer dismissed by sentence in so far that he is completely relegated to a civil status, having in law no nearer or other relation to the military service than has any civilian who has never been in the Army. Thus an order assuming to revoke a legal order of dismissal is as unauthorized as it is ineffectual. The original dismissal is an act done which can not be undone, and the order, which is the evidence of it, is therefore incapable of revocation or recall. (g) Nor can that be effected indirectly which can not legally be done directly. An officer dismissed by Executive order can not be relieved by being allowed to resign or be retired, or by being granted an honorable discharge. For, in order to be discharged, etc., from the Army, he must first be *in* the Army, and there is but one mode by which an officer once legally separated from the Army can be put into it, viz, by a new appointment according to the Constitution. (h) (Ibid., 371, par. 8.)

That a summary dismissal is not revocable by an Executive order is established law. Where an officer duly summarily dismissed in July, 1863, and subsequently

<sup>a</sup> See 7 Opins. Att. Gen., 251.

<sup>b</sup> See, as among the principal authorities on this subject, *Commonwealth v. Bussier*, 5 Sergt. & Rawle, 461; *Ex parte Hennen*, 13 Peters, 258, 259; *United States v. Guthrie*, 17 Howard, 307; 4 Opins. Att. Gen., 1, 609-613; 6 id., 5-6; 7 id., 251; 8 id., 230-232; 12 id., 424-426; *Sergeant, Const. Law*, 373; 2 Story's Coms., sec. 1537, note; 1 Kent's Coms., 310; 2 Marshall's Washington, 162.

<sup>c</sup> See 16 Opins. Att. Gen., 315.

<sup>d</sup> See 12 Opins. Att. Gen., 427.

<sup>e</sup> See 12 Opins. Att. Gen., 421; *McElrath v. United States*, 12 C. Cls. R., 202.

<sup>f</sup> See opinion of Att. Gen. (16 Opins., 298), noted under article 106.

<sup>g</sup> See 4 Opins. Att. Gen., 124; 12 id., 424-428; 14 id., 520; 15 id., 658. A contrary view expressed by the Court of Claims, in its earlier period, in a series of cases (see *Smith v. United States*, 2 C. Cls. R., 206; *Winters v. United States*, 3 id., 136; *Barnes v. United States*, 4 id., 216; *Montgomery v. United States*, 5 id., 93) was finally practically abandoned in *McElrath v. United States*, 12 id., 201.

<sup>h</sup> See 8 Opins. Att. Gen., 235; 12 id., 421; 13 id., 5; *McElrath v. United States*, 12 C. Cls. R., 202.

ART. 100. When an officer is dismissed from the service for cowardice or fraud the sentence shall further direct that the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp, and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him.<sup>1</sup>

Publication of officers cashiered for cowardice or fraud.  
100 Art. War.

ART. 101. When a court-martial suspends an officer from command, it may also suspend his pay and emoluments for the same time, according to the nature of his offense.<sup>2</sup>

Suspension of officer's pay.  
101 Art. War.

restored by an order assuming to revoke the order of dismissal, procured to be passed by Congress in 1890, an act recognizing his restoration as legal, which, however, was vetoed by the President, *held* that his status was that of a person who had been illegally in the military service since the date of the order of so-called revocation. (*Ibid.*, par. 9.)

Where, by the direction of the President, an order was issued canceling the muster in of a volunteer officer on account of facts indicating that he was not a fit person to hold a commission, *held* that this was a legal exercise of the authority of summary dismissal for cause vested in the President by the act of July 17, 1862. (*Ibid.*, 372, par. 10.)

The President had not the same power of dismissal in the case of a *volunteer* officer as he has in that of a regular officer. This for the reason that the tenure of office of the former is for a fixed term and for a limited time only; the power to dismiss is thus, in his case, not an incident of the appointing power. (*a*) But the President was invested with a special power of dismissal of volunteer officers by the act of Congress of July 17, 1862. (*Ibid.*, par. 11.)

*Held* that the ruling in Blake's Case (*b*) was applicable, and that the office of an army officer might legally be vacated by the appointment and commission of a successor, although between the office of the original officer and that of the successor there may have intervened a tenure by a third officer.

Thus (1) Captain A was dismissed from his office without legal authority; (2) Captain B, an unassigned officer, was assigned to the captaincy of A, and held it till his own resignation, one year and three months later; (3) Lieutenant C was then promoted and appointed to the office and his appointment was confirmed. *Held* that Lieutenant C was the legal incumbent of the office. (*Ibid.*, par. 12.)

*Held* that the ruling of the Supreme Court in the case of Blake was not applicable to volunteer officers of State organizations, and that a governor of a State, who had duly appointed a certain volunteer officer in a regiment, was not empowered to dismiss him by simply appointing to the same office, commissioning, and causing to be mustered into the United States service, another person. (*Ibid.*, par. 13.)

*Held* that it was quite evidently the intention of Congress in the act of July 15, 1870, section 12, that the commissions held by the officers who remained unassigned on January 1, 1871, should cease on that day. No action on the part of a mustering officer was required to carry the law into effect, as is shown by G. O. 1 of January 2, 1871, in which the separation from the service on January 1 of the unassigned officers was formally announced. (*Ibid.*, par. 14.)

The terms "cowardice" and "fraud" employed in this article may be considered as referring mainly to the offenses made punishable by articles 42 and 60. With these, however, may be regarded as included all offenses in which fraud or cowardice is necessarily involved, though the same be not expressed in terms in the charge or specification. (*Dig. Opin. J. A. Gen.*, 117, par. 1.)

Though the injunction of the article as to the direction to be added in the sentence should of course regularly be complied with, a failure so to comply will not affect the validity of the punishment of dismissal adjudged by the sentence. (*c*) The declaration of the article that after the publication "it shall be scandalous for an officer to associate with" the dismissed officer, though it has in a few cases (*d*) been incorporated in the sentence, is not intended to be, and should not be, so expressed by the court. (*Ibid.*, par. 2.)

The punishment of suspension, as imposed by sentence, is usually in the form of a suspension from rank, or from command, for a stated term, sometimes accompanied by a suspension from pay for the same period. Suspension from rank includes suspension from command. (*Ibid.*, 729, par. 1.)

A suspension from rank does not affect the right of the officer to his office. He retains the same as before, and, as an officer, remains subject as before to military control as well as to the jurisdiction of a court-martial for any military offense committed pending the term of suspension. (*e*) (*Ibid.*, par. 2.)

The effect of a suspension from rank (beside detaching the officer from the performance of the duties incident to his rank) is to deprive him of any right of promotion

<sup>a</sup> See Mechen on Public Officers, p. 283, sec. 445.

<sup>b</sup> Blake v. U. S., 103 U. S., 231.

<sup>c</sup> Note the action taken in the case published in G. C. M. O. 27, War Department, 1872.

<sup>d</sup> As in cases published in G. O. (A. and I. G. O.) of May 13, 1820; G. O. 168, Department of the Missouri, 1865.

<sup>e</sup> See 5 Opins. Att. Gen., 740; 6 id., 715.

to a vacancy in a higher grade, occurring pending the term of suspension, and which he would have been entitled to receive by virtue of seniority had he not been suspended, such right accruing to the officer next in rank. But no such loss of promotion is incident to a mere suspension from command. (*Ibid.*, 730, par. 3.)

Suspension from rank does not, however, deprive the officer of the right to rise in files in his grade—upon the promotion, for example, of the senior officer of such grade. The number of an officer in the list of his grade is not an incident of his rank, but of his appointment to office as conferred and dated, and, as we have seen, suspension does not affect the office. Moreover, loss of files is a *continuing punishment*, and if held to be involved in suspension from rank, the result would be that, for an indefinite period after the term of suspension had expired, the officer would remain under punishment, the sentence imposed by the court being thus *added to* in execution, contrary to a well-known principle of military law. (*Ibid.*, par. 4.)

It is further the effect of a suspension from rank that the officer loses for the time the minor rights and privileges of priority and precedence annexed to rank or command. Among these is the right to select quarters relatively to other officers. And where quarters are to be selected by several officers, one of whom is under sentence of suspension from rank, the suspended officer necessarily has the last choice. Or rather he has no choice, but quarters are *assigned* him by the commander; for, being still an officer of the Army, though without rank, he is entitled to *some* quarters. But *advised* that an officer sentenced to be suspended from rank could not, because of such suspension alone, be deprived of quarters previously duly selected, and occupied at the time of the suspension, such a sentence not affecting a right previously accrued and vested. (*Ibid.*, par. 5.)

Suspension from rank does not involve a status of confinement or arrest. In sentencing an officer to be suspended from rank, it is, indeed, not unusual for the court to require that he be confined during the term of suspension to his proper station, or that of his regiment, etc., i. e., that the sentence be executed there. Where this is not done, while the suspended officer is not entitled to a leave of absence, it can not affect the execution of his sentence to grant him one, and leaves of absence are not unfrequently granted under such circumstances. (*Ibid.*, par. 6.)

Suspension from rank or command does not involve a loss or authorize a stoppage of pay for the period of suspension. (a) Pay can not be forfeited by implication. Unless, therefore, the sentence imposes a suspension from rank (or command) "*and pay*," or in terms to that effect, the suspended officer remains as much entitled to his pay as if he had not been suspended at all, and to require him to forfeit any pay would be *adding to the punishment* and illegal. (*Ibid.*, 731, par. 7.)

Where, however, the suspension is in terms extended by the sentence to *pay*, the pay is forfeited absolutely, not merely withheld. And *all* the pay is forfeited, unless otherwise expressly indicated in the sentence. The forfeiture imposed by a sentence of suspension from rank (or command) and pay for a designated term is a forfeiture of the pay of that specific term, the suspension of the rank and that of the pay being coincident. Under such a sentence the officer can not legally be deprived of pay due for a period prior to the suspension. Where an officer was sentenced to suspension from rank and pay for six months, *held*, that his entire pay for those months was absolutely forfeited, notwithstanding that the pay of officers of his grade was increased by statute pending the term. (*Ibid.*, par. 8.)

A sentence of suspension from rank and pay does not affect the right of the officer to the allowances which are no part of his pay, (b) as the allowance for rent of quarters, as also the allowance for fuel, or rather right to purchase fuel at reduced rate. (*Ibid.*, par. 9.)

The status of an officer under suspension is the same whether such suspension has been imposed directly by sentence or by way of commutation for a more severe punishment. Thus, where a sentence of dismissal was commuted to suspension from rank on half pay for one year, *held*, that the officer, while forfeiting the rights and privileges of rank and command during such term, was yet amenable to trial by court-martial for a military offense committed pending the same. (*Ibid.*, par. 10.)

Where an officer, when under a sentence of suspension, is ordered by the commander who approved the sentence, or some higher competent authority, to resume his command or the performance of his regular military duty, such order will in general operate as a constructive remission of the punishment and thus terminate the suspension. (c) (*Ibid.*, 732, par. 11.)

In rare cases the form "to be suspended from the service" has been employed in the sentence. Such a suspension is equivalent in substance to a suspension from rank.

A still rarer form, "to be suspended from duty," has been deemed to be practically equivalent to a sentence of suspension from command. (d) These forms are now rarely resorted to. (*Ibid.*, par. 12.)

A sentence, "to be suspended from the Military Academy," in a case of a cadet, practically severs him from the military service as a cadet during the term of the suspension. It is usually added in such a sentence that at the end of such term the party is to join the next lower class. (*Ibid.*, par. 13.)

Like dismissal, suspension takes effect upon and from notice of the approval of the sentence officially communicated to the officer, either by the promulgation of the same at his station, or, where he is absent therefrom by authority, by the delivery to him of a copy of the order of approval or other form of official personal notification of the fact of the approval. (*Ibid.*, par. 14.)

Suspension, as a punishment for a *noncommissioned* officer, is not authorized in terms in article 101, nor is it contemplated in the Army Regulations. It has been

a See 4 Opins. Att. Gen., 444; 6 *id.*, 203.

b McNaghten, 27.

c See McNaghten, 22.

d Suspension from duty, as distinguished from suspension from rank, is a recognized punishment in the naval service. Navy Regulations, art. 32, sec. 2; Harwood, 134-5. The form "to be suspended from rank and duty" occurs in G. C. M. O. 19 of 1885.

ART. 102. No person shall be tried a second time for the same offense.<sup>1</sup>

No person tried twice for same, etc.

ART. 103. No person shall be liable to be tried and punished by a general court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless, by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

102 Art. War. Limitation of time of prosecution.

103 Art. War.

No person shall be tried or punished by a court-martial for desertion in time of peace and not in the face of an enemy, committed more than two years before the arraignment of such person for such offense, unless he shall meanwhile have absented himself from the United States, in which case the time of his absence shall be excluded in computing the period of the limitation: *Provided*, That said limitation shall not begin until the end of the term for which said person was mustered into the service.<sup>2</sup> *Act of April 11, 1890 (26 Stat. L., 54).*

Limitation in desertion, etc.

Exception.

Apr. 11, 1890, v. 26, p. 54.

Beginning of limitation.

ART. 104. No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer ordering the court, or by the officer commanding for the time being.<sup>3</sup> *Act of July 27, 1892, (27 Stat. L., 278.)*

Approval of sentence.

July 27, 1892, v. 27, p. 278.

104 Art. War.

ART. 105. No sentence of a court-martial, inflicting the punishment of death, shall be carried into execution until it shall have been confirmed by the President; except in the cases of persons convicted, in time of war, as spies, mutineers, deserters, or murderers, and in the cases of

Confirmation of death sentence.

July 17, 1862, c. 201, s. 5, v. 12, p. 598; Mar. 3, 1863, c. 75, s. 21, v. 12, p. 735; July 2, 1864, c. 215, s. 1, v. 13, p. 356.

105 Art. War.

adjudged in but rare cases, (a) and can not be regarded as sanctioned by principle or usage. (*Ibid.*, 733, par. 15.)

Suspension not divesting the officer of his office or commission, but simply holding in abeyance the rights and functions attached to his rank or command, he properly reverts, when the term of the punishment is completed, to his former rank and the command attached thereto, and continues to hold and exercise the same as before his arrest or trial. (b) (*Ibid.*, par. 16.)

Under existing usage (1892) an officer suspended by sentence from rank and command is deemed entitled to retain his quarters. But such rule may, in some cases, work a considerable inconvenience as well as prejudice to discipline, as where, for example, the suspended officer is a post commander, and continues, pending the term of his suspension, and while another officer has succeeded him as commander, to occupy the proper commanding officer's quarters. An army regulation prescribing that an officer in such a status shall not be entitled to retain or to select quarters by virtue of rank, but shall have assigned him any quarters that are available at his late station or elsewhere, *advised* as desirable to be adopted. (*Ibid.*, par. 17.)

Under the ruling of the Secretary of War, as published in circular No. 3 (H. A.), 1888, an officer under suspension, but not required by his sentence to be "confined to the limits of his post," is not entitled to forage for his horse or horses during the term of his suspension. (*Ibid.*, par. 18.)

Suspension does not affect pay unless expressly forfeited in the sentence. Nor does a commutation of dismissal to suspension affect pay. Thus, where a sentence of dismissal of a cadet was commuted to suspension for one year, *held* that he was entitled to full pay during the year of suspension. (*Ibid.*, par. 19.)

But see 3 Dec. Second Comptroller, § 941.

<sup>1</sup>See notes to paragraph 1335, *ante*.

<sup>2</sup>See the title "Statutes of Limitation," in the chapter entitled MILITARY TRIBUNALS.

<sup>3</sup>See the title "Reviewing authority," in the chapter entitled MILITARY TRIBUNALS.

<sup>a</sup>See a comparatively late instance in G. C. M. O. 33, Department of the East, 1872. b Sullivan, who (p. 88) traces this punishment to "the ecclesiastical jurisdiction, which admitted suspension as a minor excommunication," adds, in regard to the officer sentenced, "At the expiration of the term of suspension he becomes a perfect man again."

guerrilla marauders, convicted, in time of war, of robbery, burglary, arson, rape, assault with intent to commit rape, or of violation of the laws and customs of war; and in such excepted cases the sentence of death may be carried into execution upon confirmation by the commanding general in the field, or the commander of the department, as the case may be.<sup>1</sup>

Confirmation  
of dismissals in  
time of peace.  
106 Art. War.

ART. 106. In time of peace no sentence of a court-martial, directing the dismissal of an officer, shall be carried into execution, until it shall have been confirmed by the President.<sup>1</sup>

Dismissal by  
division or bri-  
gade courts.  
Dec. 21, 1861, c.  
3, v. 12, p. 330.  
107 Art. War.

ART. 107. No sentence of a court-martial appointed by the commander of a division or of a separate brigade of troops, directing the dismissal of an officer, shall be carried into execution until it shall have been confirmed by the general commanding the army in the field to which the division or brigade belongs.<sup>1</sup>

General offi-  
cers; sentences  
respecting.  
108 Art. War.

ART. 108. No sentence of a court-martial, either in time of peace or in time of war, respecting a general officer, shall be carried into execution, until it shall have been confirmed by the President.<sup>1</sup>

Confirmation  
by officer order-  
ing court.  
109 Art. War.

ART. 109. All sentences of a court-martial may be confirmed and carried into execution by the officer ordering the court, or by the officer commanding for the time being, where confirmation by the President, or by the commanding general in the field, or commander of the department, is not required by these articles.<sup>1</sup>

Approval of  
field officer's sen-  
tence.  
July 27, 1892, v.  
27, p. 278.  
110 Art. War.

ART. 110. No sentence adjudged by a field officer, detailed to try soldiers of his regiment, shall be carried into execution until the same shall have been approved by the brigade commander, or, in case there be no brigade commander, by the commanding officer of the post or camp.<sup>1</sup> *Act of July 27, 1892 (27 Stat. L., 278).*

Suspension of  
sentences of  
death or dis-  
missal.  
111 Art. War.

ART. 111. Any officer who has authority to carry into execution the sentence of death, or of dismissal of an officer, may suspend the same until the pleasure of the President shall be known; and, in such case, he shall immediately transmit to the President a copy of the order of suspension, together with a copy of the proceedings of the court.<sup>1</sup>

Pardon and  
mitigation of  
sentences.  
July 17, 1862, c.  
201, s. 7, v. 12, p.  
598.  
112 Art. War.

ART. 112. Every officer who is authorized to order a general court-martial shall have power to pardon or mitigate any punishment adjudged by it, except the punishment of death or of dismissal of an officer. Every officer commanding a regiment or garrison in which a regimental or garrison

<sup>1</sup>See the title "The reviewing authority," in the chapter entitled MILITARY TRIBUNALS.

court-martial may be held, shall have power to pardon or mitigate any punishment which such court may adjudge.<sup>1</sup>

ART. 113. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance of place may admit, forward the original proceedings and sentence of such court to the Judge-Advocate-General of the Army, in whose office they shall be carefully preserved.<sup>2</sup>

Proceedings forwarded to Judge-Advocate-General. July 17, 1862, c. 201, ss. 5, 6, v. 12. 113 Art. War.

ART. 114. Every party tried by a general court-martial shall, upon demand thereof, made by himself or by any person in his behalf, be entitled to a copy of the proceedings and sentence of such court.<sup>3</sup>

Party entitled to a copy. 114 Art. War.

ART. 115. A court of inquiry, to examine into the nature of any transaction of, or accusation or imputation against, any officer or soldier, may be ordered by the President or by any commanding officer; but, as courts of inquiry may be perverted to dishonorable purposes, and may be employed, in the hands of weak and envious commandants, as engines for the destruction of military merit, they shall never be ordered by any commanding officer, except upon a demand by the officer or soldier whose conduct is to be inquired of.<sup>3</sup>

Courts of inquiry, how ordered. 115 Art. War.

ART. 116. A court of inquiry shall consist of one or more officers, not exceeding three, and a recorder, to reduce the proceedings and evidence to writing.<sup>3</sup>

Members of court of inquiry. 116 Art. War.

ART. 117. The recorder of a court of inquiry shall administer to the members the following oath: "You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward: so help you God." After which the president of the court shall administer to the recorder the following oath: "You, A B, do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing: so help you God."<sup>3</sup>

Oaths of members and recorder of court of inquiry. 117 Art. War.

ART. 118. A court of inquiry, and the recorder thereof, shall have the same power to summon and examine witnesses as is given to courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before courts-martials,<sup>4</sup> and

Witnesses before courts of inquiry. Mar. 3, 1863, c. 75, s. 27, v. 12, p. 736; Mar. 3, 1863, c. 79, s. 25, v. 12, p. 754. 118 Art. War.

<sup>1</sup>See the title "The reviewing authority," in the chapter entitled MILITARY TRIBUNALS. Section 5 of the act of July 27, 1892 (27 Stat. L., 281), provides "that commanding officers authorized to approve the sentences of summary courts shall have the power to remit or mitigate the same." See also note to paragraph 2, "The pardoning power."

<sup>2</sup>See the title "Record of proceedings," in the chapter entitled MILITARY TRIBUNALS.

<sup>3</sup>See the title "Courts of inquiry," in the chapter entitled MILITARY TRIBUNALS.

<sup>4</sup>So in the roll.

the party accused shall be permitted to examine and cross-examine them, so as fully to investigate the circumstances in question.<sup>1</sup>

Opinion; when given by.

**119 Art. War.** ART. 119. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.<sup>1</sup>

Authentication of proceedings of court of inquiry.

**120 Art. War.** ART. 120. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder and the president thereof, and delivered to the commanding officer.<sup>1</sup>

Proceedings of court of inquiry used as evidence.

**121 Art. War.** ART. 121. The proceedings of a court of inquiry may be admitted as evidence by a court-martial, in cases not capital, nor extending to the dismissal of an officer: *Provided*, That the circumstances are such that oral testimony cannot be obtained.<sup>1</sup>

Command, when different corps happen to join.

**122 Art. War.** ART. 122. If, upon marches, guards, or in quarters, different corps of the Army happen to join or do duty together, the officer highest in rank of the line of the Army, Marine Corps, or militia, by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful to the service, unless otherwise specially directed by the President, according to the nature of the case.<sup>2</sup>

Regular and volunteer officers on same footing, etc.

**123 Art. War.** ART. 123. In all matters relating to the rank, duties, and rights of officers, the same rules and regulations shall apply to officers of the Regular Army and to volunteers commissioned in, or mustered into said service, under the laws of the United States, for a limited period.<sup>2</sup>

Rank of militia officers on duty with officers of regular or volunteer forces.

**124 Art. War.** ART. 124. Officers of the militia of the several States, when called into the service of the United States, shall on all detachments, courts-martial, and other duty wherein they may be employed in conjunction with the regular or volunteer forces of the United States, take rank next after all officers of the like grade in said regular or volunteer forces, notwithstanding the commissions of such militia officers may be older than the commissions of the said officers of the regular or volunteer forces of the United States.<sup>2</sup>

Deceased officers' effects.

**125 Art. War.** ART. 125. In case of the death of any officer, the major of his regiment, or the officer doing the major's duty, or the second officer in command at any post or garrison, as the case may be, shall immediately secure all his effects then in camp or quarters, and shall make, and transmit to the office of the Department of War, an inventory thereof.<sup>3</sup>

Deceased soldiers' effects.

**126 Art. War.** ART. 126. In case of the death of any soldier, the commanding officer of his troop, battery, or company shall immediately secure all his effects then in camp or quarters,

<sup>1</sup> See the title "Courts of inquiry," in the chapter entitled MILITARY TRIBUNALS.

<sup>2</sup> See chapter entitled RANK AND COMMAND, ETC.

<sup>3</sup> See the title "Deceased officers," in the chapter entitled COMMISSIONED OFFICERS.

and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the Department of War.

ART. 127. Officers charged with the care of the effects of deceased officers or soldiers shall account for and deliver the same, or the proceeds thereof, to the legal representatives of such deceased officers or soldiers. And no officer so charged shall be permitted to quit the regiment or post until he has deposited in the hands of the commanding officer all the effects of such deceased officers or soldiers not so accounted for and delivered.<sup>1</sup>

Effects of deceased officers and soldiers to be accounted for.  
127 Art. War.

ART. 128. The foregoing articles shall be read and published, once in every six months, to every garrison, regiment, troop, or company in the service of the United States, and shall be duly observed and obeyed by all officers and soldiers in said service.

Articles of War to be published once in six months to every regiment, etc.  
128 Art. War.

SEC. 1343. All persons who, in time of war, or of rebellion against the supreme authority of the United States, shall be found lurking or acting as spies, in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be triable by a general court-martial, or by a military commission, and shall, on conviction thereof, suffer death.

Spies.  
Apr. 10, 1806, c. 20, s. 2, v. 2, p. 371; Feb. 13, 1862, c. 25, s. 4, v. 12, p. 340; Mar. 3, 1863, c. 75, s. 38, v. 12, p. 737.

<sup>1</sup>This article, in connection with the two preceding articles, provides for the securing of the effects of deceased officers and soldiers, making inventory of the same, and accounting for them to the proper legal representative, etc. These articles have special reference to cases of deaths of military persons while in active service in the field or at remote military posts, and their provisions apply only to such effects as are left by the deceased "in camp or quarters." (See articles 125 and 126.) An attempt by the commander, etc., to secure effects left elsewhere would not be within the authority here given, and might subject the officer to the liability of an administrator; such a proceeding would not therefore be advisable. (a) Upon accounting to the duly qualified legal representative, as directed in the article, the responsibility of the officer is discharged, and it remains for the representative to dispose of the property according to the law applicable to the case. (Dig. Opin. J. A. Gen. 139, par. 1.)

A military employee of the United States service having died in the service, his remains, at the request of his relatives, were sent to them on a Mississippi steamboat. Wages being due to the employee at the time of his death, the disbursing officer paid out of these the charges of the transportation and turned over the balance to the man's heirs. *Held*, in view of the tenor and effect of this article, that the disposition of the funds in this case was erroneous, and that the full wages due (without deduction) should have been accounted for to the "legal representatives" of the deceased. (Ibid., 140, par. 2.)

See also paragraphs 1003, 1004, 1077, and 1078, ante.



## TREATIES, CONVENTIONS, AND AGREEMENTS.

### AMELIORATION OF THE CONDITION OF THE WOUNDED IN TIME OF WAR.

Aug. 22, 1864. *Convention between the United States, Baden, Switzerland, Belgium, Denmark, Spain, France, Hesse, Italy, Netherlands, Portugal, Prussia, Württemberg, Sweden, Greece, Great Britain, Mecklenburg-Schwerin, Turkey, Bavaria, Austria, Russia, Persia, Roumania, Salvador, Montenegro, Servia, Bolivia, Chili, Argentine Republic, Japan and Peru; with additional articles: For the amelioration of the wounded in armies in the field; concluded August 22, 1864; acceded to by the President March 1, 1882; accession concurred in by the Senate March 16, 1882; proclaimed as to the original convention, but with reserve as to the additional articles, July 26, 1882.<sup>1</sup>*

Contracting  
parties.

<p>The Swiss Confederation; His Royal Highness the Grand Duke of Baden; His Majesty the King of the Bel- gians; His Majesty the King of Denmark; Her Majesty the Queen of Spain; His Majesty the Emperor of the French; His Royal Highness the Grand Duke of Hesse; His Majesty the King of Italy; His Majesty the King of the Netherlands; His Majesty the King of Portugal and of the Algarves; His Majesty the King of Prussia; His Ma- jesty the King of Württem- berg, being equally animated with the desire to soften, as</p>	<p>La Confédération suisse; Son Altesse Royale le Grand- Duc de Bade; Sa Majesté le Roi des Belges; Sa Majesté le Roi de Danemark; Sa Ma- jesté la Reine d'Espagne; Sa Majesté l'Empereur des Fran- çais; Son Altesse Royale le Grand-Duc de Hesse; Sa Majesté le Roi d'Italie; Sa Majesté le Roi des Pays-Bas; Sa Majesté le Roi de Portu- gal et des Algarves; Sa Ma- jesté le Roi de Prusse; Sa Majesté le Roi de Wurtem- berg,—également animés du désir d'adoucir autant qu'il dépend d'eux, les maux in- séparables de la guerre; de</p>
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<sup>1</sup> The President's ratification of the act of accession, as transmitted to Berne and exchanged for the ratifications of the other signatory and adhesionary powers, embraces the French text of the convention of August 22, 1864, and the additional articles of October 20, 1868. The French text is therefore, for all international purposes, the standard one.

much as depends on them, to suppress the evils of warfare, to suppress its useless hardships and improve the fate of wounded soldiers on the field of battle, have resolved to conclude a convention to that effect, and have named for their plenipotentiaries, viz:

The Swiss Confederation: Guillaume Henri Dufour, Grand Officer of the Imperial Order of the Legion of Honor, General in Chief of the federal army, Member of the Council of the States; Gustave Moynier, President of the International Relief Committee for wounded soldiers, and of the Geneva Society of Public Utility; and Samuel Lehmann, federal Colonel, Doctor in Chief of the federal army, Member of the National Council;

His Royal Highness the Grand Duke of Baden: Robert Volz, Knight of the Order of the Lion of Zähringen, M. D., Medical Councillor at the Direction of Medical Affairs; and Adolphe Steiner, Knight of the Order of the Lion of Zähringen, Chief Staff Physician;

His Majesty the King of the Belgians: Auguste Vischers, Officer of the Order of Léopold, Councillor at the Council of Mines;

His Majesty the King of Denmark: Charles Émile Fenger, Commander of the Order of Danebrog, decorated with the silver cross of

supprimer les rigueurs inutiles et d'améliorer le sort des militaires blessés sur les champs de bataille, ont résolu de conclure une convention à cet effet et ont nommé pour leurs Plénipotentiaires, savoir:

La Confédération suisse: le Sieur Guillaume-Henri Dufour, Grand-Officier de l'ordre Impérial de la Légion d'Honneur, Général en chef de l'armée fédérale, Membre du Conseil des États; le Sieur Gustave Moynier, Président du Comité international de secours pour les militaires blessés et de la Société genevoise d'utilité publique; et le Sieur Samuel Lehmann, Colonel fédéral, Médecin en chef de l'armée fédérale, Membre du Conseil national;

Son Altesse Royale le Grand-Duc de Bade: le Sieur Robert Volz, Chevalier de l'Ordre du Lion de Zähringen, Docteur en médecine, Conseiller médical à la Direction des affaires médicales; et le Sieur Adolphe Steiner, Chevalier de l'Ordre du Lion de Zähringen, Médecin-major;

Sa Majesté le Roi des Belges: le Sieur Auguste Vischers, Officier de l'Ordre de Léopold, Conseiller au Conseil des mines;

Sa Majesté le Roi de Danemark: le Sieur Charles-Émile Fenger, Commandeur de l'Ordre du Danebrog, décoré de la croix d'argent du même

Plénipotentiaires.

the same Order, Grand Cross of the Order of Léopold of Belgium, &c., &c., His Councillor of State;

Her Majesty the Queen of Spain: Don José Heriberto García de Quevedo, Gentleman of Her Chamber on active service, Knight of the Grand Cross of Isabella the Catholic, Numerary Commander of the Order of Charles III., Knight of the first class of the Royal and Military Order of St. Ferdinand, Officer of the Legion of Honor of France, Her Minister-Resident to the Swiss Confederation;

His Majesty the Emperor of the French: Georges Charles Jagerschmidt, Officer of the Imperial Order of the Legion of Honor, Officer of the Order of Léopold of Belgium, Knight of the Order of the Red Eagle of Prussia of the third class, &c., &c., Sub-Director at the Ministry of Foreign Affairs; Henri Eugène Séguineau de Préval, Knight of the Imperial Order of the Legion of Honor, decorated with the Imperial Order of the Medjidié of fourth class, Knight of the Order of Saints Maurice and Lazarus of Italy, &c., &c., military Sub-Commissioner of first class; and Martin François Boudier, Officer of the Imperial Order of the Legion of Honor, decorated with the Imperial Order of the Medjidié of the fourth class, decorated with

Ordre, Grand'Croix de l'Ordre de Léopold de Belgique, &c., &c., Son Conseiller d'État;

Sa Majesté la Reine d'Espagne: le Sieur Don José Heriberto García de Quevedo, Gentilhomme de sa Chambre avec exercice, Chevalier Grand'Croix d'Isabelle la Catholique, Commandeur numéraire de l'Ordre de Charles III., Chevalier de première classe de l'Ordre Royal et Militaire de St. Ferdinand, Officier de la Légion d'Honneur de France, Son Ministre-Résident auprès de la Confédération suisse;

Sa Majesté l'Empereur des Français: le Sieur Georges-Charles Jagerschmidt, Officier de l'Ordre Impérial de la Légion d'Honneur, Officier de l'Ordre de Léopold de Belgique, Chevalier de l'Ordre de l'Aigle rouge de Prusse de troisième classe, &c., &c., Sous-Directeur au Ministère des Affaires Étrangères; le Sieur Henri-Eugène Séguineau de Préval, Chevalier de l'Ordre Impérial de la Légion d'Honneur, décoré de l'Ordre Impérial du Medjidié de quatrième classe, Chevalier de l'Ordre des Saints Maurice et Lazare d'Italie, &c., &c., Sous-intendant militaire de première classe; et le Sieur Martin-François Boudier, Officier de l'Ordre Impérial de la Légion d'Honneur, décoré de la médaille de la valeur militaire d'Italie,

the medal of Military Valor &c., &c., médecin principal de  
of Italy, &c., &c.; doctor in deuxième classe;  
chief of second class;

His Royal Highness the Son Altesse Royale le  
Grand Duke of Hesse: Grand-Duc de Hesse: le  
Charles Auguste Brodrück, Sieur Charles-Auguste Brod-  
Knight of the Order of Philip rüick, Chevalier de l'Ordre de  
the Magnanimous, of the Or- Philippe le Magnanime, de  
der of St. Michael of Bavaria, l'Ordre de St. Michel de  
Officer of the Royal Order Bavière, Officier de l'Ordre  
of the Holy Savior, &c., &c., Royal du St. Sauveur, &c.,  
Chief of Battalion, Staff Offi- &c., Chef de bataillon d'état-  
cer; major;

His Majesty the King of Sa Majesté le Roi d'Italie:  
Italy: Jean Capello, Knight Sieur Jean Capello, Chevalier  
of the Order of Saints Mau- de l'Ordre des Saints Maurice  
rice and Lazarus, His Consul et Lazare, Son Consul Gé-  
General to Switzerland, and néral en Suisse, et le Sieur  
Felix Baroffio, Knight of the Félix Baroffio, Chevalier de  
Order of Saints Maurice and l'Ordre des Saints Maurice  
Lazarus, Doctor in Chief of et Lazare, Médecin de divi-  
medical division; sion;

His Majesty the King of Sa Majesté le Roi des Pays-  
the Netherlands: Bernard Bas: le Sieur Bernard-Ortu-  
Ortuinus Theodore Henri inus-Théodore-Henri Wes-  
Westenberg, Officer of His tenberg, Officier de Son Ordre  
Order of the Crown of Oak, de la Couronne de Chêne,  
Knight of the Orders of Chevalier des Ordres de  
Charles III. of Spain, of the Charles III. d'Espagne, de  
Crown of Prussia, of Adolphe la Couronne de Prusse,  
of Nassau, L. D., His Secre- d'Adolphe de Nassau, Doc-  
tary of Legation at Frank- teur en droit, Son Secrétaire  
fort; de Légation à Francfort;

His Majesty the King of Sa Majesté le Roi de Por-  
Portugal and of the Algarves: tugal et des Algarves: le  
José Antonio Marques, Sieur José-Antonio Marques,  
Knight of the Order of Christ, Chevalier de l'Ordre du  
of Our Lady of the Concep- Christ, de Notre-Dame de la  
tion of Villa Viçosa, of Saint Conception de Villa-Viçosa,  
Benedict of Aviz, of Leopold de Saint-Benoit d'Aviz, de  
of Belgium, &c., M. D. Sur- Léopold de Belgique, &c.,  
geon of Brigade, Sub Chief Docteur en médecine et chi-  
to the Department of Health rurgie, Chirurgien de brigade,  
at the Ministry of War; Sous-Chef du Département  
de Santé au Ministère de la  
Guerre;

His Majesty the King of Prussia: Charles Albert de Kamptz, Knight of the Order of the Red Eagle of second class, &c., &c., &c., His Envoy Extraordinary and Minister Plenipotentiary to the Swiss Confederation, Private Councillor of Legation; God-efroi Frédéric François Lœf- flier, Knight of the Order of the Red Eagle of third class, &c., &c., M. D. Physician in Chief of the fourth Army Corps; Georges Hermann Jules Ritter, Knight of the Order of the Crown of third class, &c., &c., Private Coun- cillor at the Ministry of War;

His Majesty the King of Wurtemberg: Christophe Ul- ric Hahn, Knight of the Order of Saints Maurice and La- zarus, &c., Doctor of Philoso- phy and Theology, Member of the Central Royal Direc- tion for Charitable Institu- tions:

Who, after having ex- changed their powers, and found them in good and due form, agree to the following articles:

ARTICLE I. Ambulances and military hospitals shall be acknowledged to be neu- ter, and, as such, shall be protected and respected by belligerents so long as any sick or wounded may be therein,

Such neutrality shall cease if the ambulances or hospi-

Sa Majesté le Roi de Prusse: le Sieur Charles- Albert de Kamptz, Chevalier de l'Ordre de l'Aigle rouge de seconde classe, &c., &c., &c., Son Envoyé Extraordinaire et Ministre Plénipotentiaire près la Confédération suisse, Conseiller intime de Léga- tion; le Sieur Godefroi-Fré- déric François Lœffler, Che- valier de l'Ordre de l'Aigle rouge de troisième classe, &c., &c., Docteur en médecine, Médecin général du qua- trième corps d'armée, et le Sieur Georges-Hermann, Jules Ritter, Chevalier de l'Ordre de la Couronne de troisième classe, &c., &c.- Conseiller intime au Minis- tère de la Guerre;

Sa Majesté le Roi de Wur- temberg: le Sieur Christophe- Ulric Hahn, Chevalier de l'Ordre des Saints Maurice et Lazare, &c., Docteur en philosophie et théologie, Membre de la Direction cen- trale et Royale pour les éta- blissements de bienfaisance:

Lesquels, après avoir échangé leurs pouvoirs, trouvés en bonne et due forme, sont convenus des articles suivants:

ARTICLE I. Les ambu- lances et les hôpitaux mili- taires seront reconnus neu- tres, et, comme tels, protégés et respectés par les belligé- rants aussi longtemps qu'il s'y trouvera des malades ou des blessés.

La neutralité cesserait, si ces ambulances ou ces hôpi-

Hospitals and ambulances with sick or wounded protected and held inviolate, etc.

Exception.

tals should be held by a military force.

ART. II. Person employed in hospitals and ambulances, comprising the staff for superintendence, medical service, administration, transport of wounded, as well as chaplains, shall participate in the benefit of neutrality, whilst so employed, and so long as there remain any wounded to bring in or to succor.

ART. III. The persons designated in the preceding article may, even after occupation by the enemy, continue to fulfill their duties in the hospital or ambulance which they serve, or may withdraw in order to rejoin the corps to which they belong.

Under such circumstances, when these persons shall cease from their functions, they shall be delivered by the occupying army to the outposts of the enemy.

ART. IV. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals can not, in withdrawing, carry away any articles but such as are their private property.

Under the same circumstances an ambulance shall, on the contrary, retain its equipment.

ART. V. Inhabitants of the country who may bring help to the wounded shall be respected, and shall remain free. The generals of the

taux étaient gardés par une force militaire.

ART. II. Le personnel des hôpitaux et des ambulances, comprenant l'intendance, les services de santé, d'administration, de transport des blessés, ainsi que les aumôniers, participera au bénéfice de la neutralité lorsqu'il fonctionnera, et tant qu'il restera des blessés à relever ou à secourir.

ART. III. Les personnes désignées dans l'article précédent pourront, même après l'occupation par l'ennemi, continuer à remplir leurs fonctions dans l'hôpital ou l'ambulance qu'elles desservent, ou se retirer pour rejoindre le corps auquel elles appartiennent.

Dans ces circonstances, lorsque ces personnes cesseront leurs fonctions, elles seront remises aux avant-postes ennemis, par les soins de l'armée occupante.

ART. IV. Le matériel des hôpitaux militaires demeurant soumis aux lois de la guerre, les personnes attachées à ces hôpitaux ne pourront, en se retirant, emporter que les objets qui sont leur propriété particulière.

Dans les mêmes circonstances, au contraire, l'ambulance conservera son matériel.

ART. V. Les habitants du pays qui porteront secours aux blessés seront respectés, et demeureront libres. Les généraux des Puissances

Employees,  
etc., respected as  
neutrals.

Employees,  
etc., protected by  
occupying forces.

Employees in  
hospitals to take  
away private  
property only.

Persons serv-  
ing the wounded  
to remain free.

belligerent Powers shall make it their care to inform the inhabitants of the appeal addressed to their humanity, and of the neutrality which will be the consequence of it.

Houses where the wounded are cared for to be protected.

Exemptions for care of wounded.

Any wounded man entertained and taken care of in a house shall be considered as a protection thereto. Any inhabitant who shall have entertained wounded men in his house shall be exempted from the quartering of troops, as well as from a part of the contributions of war which may be imposed.

Soldiers sick or wounded of any nation to be relieved and cared for.

ART. VI. Wounded or sick soldiers shall be entertained and taken care of, to whatever nation they may belong.

Delivery of wounded, etc.

Commanders-in-chief shall have the power to deliver immediately to the outposts of the enemy soldiers who have been wounded in an engagement, when circumstances permit this to be done, and with the consent of both parties.

Soldiers incapacitated for service to be sent home.

Those who are recognized, after their wounds are healed, as incapable of serving, shall be sent back to their country.

Conditions of return.

The others may also be sent back, on condition of not again bearing arms during the continuance of the war.

Evacuations, etc., to have absolute neutrality.

Evacuations, together with the persons under whose directions they take place, shall be protected by an absolute neutrality.

Hospital, ambulance, and evacuation flag, etc.

ART. VII. A distinctive and uniform flag shall be

belligérantes auront pour mission de prévenir les habitants de l'appel fait à leur humanité, et de la neutralité qui en sera la conséquence.

Tout blessé recueilli et soigné dans une maison y servira de sauvegarde. L'habitant qui aura recueilli chez lui des blessés sera dispensé du logement des troupes, ainsi que d'une partie des contributions de guerre qui seraient imposées.

ART. VI. Les militaires blessés ou malades seront recueillis et soignés, à quelque nation qu'ils appartiendront.

Les Commandants-en-chef auront la faculté de remettre immédiatement aux avant-postes ennemis, les militaires blessés pendant le combat, lorsque les circonstances le permettront et du consentement des deux partis.

Seront renvoyés dans leurs pays ceux qui, après guérison, seront reconnus incapables de servir.

Les autres pourront être également renvoyés, à la condition de ne pas reprendre les armes pendant la durée de la guerre.

Les évacuations, avec le personnel qui les dirige, seront couvertes par une neutralité absolue.

ART. VII. Un drapeau distinctif et uniforme sera

adopted for hospitals, ambulances and evacuations. It must, on every occasion, be accompanied by the national flag. An arm-badge (bras-sard) shall also be allowed for individuals neutralized, but the delivery thereof shall be left to military authority.

The flag and the arm-badge shall bear a red cross on a white ground.

ART. VIII. The details of execution of the present convention shall be regulated by the commanders-in-chief of belligerent armies, according to the instructions of their respective governments, and in conformity with the general principles laid down in this convention.

ART. IX. The high contracting Powers have agreed to communicate the present convention to those Governments which have not found it convenient to send plenipotentiaries to the International Conference at Geneva, with an invitation to accede thereto; the protocol is for that purpose left open.

ART. X. The present convention shall be ratified, and the ratifications shall be exchanged at Berne, in four months, or sooner, if possible.

In faith whereof the respective Plenipotentiaries have signed it and have affixed their seals thereto.

Done at Geneva, the twenty-second day of the

adopté pour les hôpitaux, les ambulances et les évacuations. Il devra être, en toute circonstance, accompagné du drapeau national. Un brassard sera également admis pour le personnel neutralisé, mais la délivrance en sera laissée à l'autorité militaire.

Arm-badge.

Le drapeau et le brassard porteront croix rouge sur fond blanc.

Flag and arm-badge to bear red cross, etc.

ART. VIII. Les détails d'exécution de la présente convention seront réglés par les Commandants en chef des armées belligérantes, d'après les instructions de leurs Gouvernements respectifs, et conformément aux principes généraux énoncés dans cette convention.

Execution of details of convention.

ART. IX. Les hautes Puissances contractantes sont convenues de communiquer la présente convention aux Gouvernements qui n'ont pu envoyer des Plénipotentiaires à la Conférence internationale de Genève, en les invitant à y accéder; le protocole est à cet effet laissé ouvert.

Invitation to be made to certain governments to accede to convention.

ART. X. La présente convention sera ratifiée, et les ratifications en seront échangées à Berne, dans l'espace de quatre mois, ou plus tôt si faire se peut.

Protocol to remain open, etc.

En foi de quoi les Plénipotentiaires respectifs l'ont signée et y ont apposé le cachet de leurs armes.

Ratification.

Signatures.

Fait à Genève, le vingt-deuxième jour du mois d'août



month of August of the year del'an mil huit-cent soixante-  
one thousand eight hundred quatre.  
and sixty-four.

[L. S.] General G. H. DU- [L. S.] Général G. H. DU-  
FOUR. FOUR.

[L. S.] G. MOYNIER. [L. S.] G. MOYNIER.

[L. S.] Dr. LEHMANN. [L. S.] Dr. LEHMANN.

[L. S.] Dr. ROBERT VOLZ. [L. S.] Dr. ROBERT VOLZ.

[L. S.] STEINER. [L. S.] STEINER.

[L. S.] VISSCHERS. [L. S.] VISSCHERS.

[L. S.] FENGER. [L. S.] FENGER.

[L. S.] J. HERIBERTO GAR- [L. S.] J. HERIBERTO GAR-  
CÍA DE QUEVEDO. CÍA DE QUEVEDO.

[L. S.] CH. JAGERSCHMIDT. [L. S.] CH. JAGERSCHMIDT.

[L. S.] S. DE PRÉVAL. [L. S.] S. DE PRÉVAL.

[L. S.] BOUDIER. [L. S.] BOUDIER.

[L. S.] BRODRÜCK. [L. S.] BRODRÜCK.

[L. S.] CAPELLO. [L. S.] CAPELLO.

[L. S.] F. BAROFFIO. [L. S.] F. BAROFFIO.

[L. S.] WESTENBERG. [L. S.] WESTENBERG.

[L. S.] JOSÉ ANTONIO MAR- [L. S.] JOSÉ ANTONIO MAR-  
QUES. QUES.

[L. S.] DE KAMPTZ. [L. S.] DE KAMPTZ.

[L. S.] LÖEFFLER. [L. S.] LÖEFFLER.

[L. S.] RITTER. [L. S.] RITTER.

[L. S.] Dr. HAHN. [L. S.] Dr. HAHN.<sup>1</sup>

#### ADDITIONAL ARTICLES.<sup>2</sup>

Proposed ex-  
tension of provi-  
sions of conven-  
tion to armies on  
the sea.

The governments of North Ger-  
many, Austria, Baden, Bavaria,  
Belgium, Denmark, France, Great  
Britain, Italy, the Netherlands,

Les Gouvernements de l'Alle-  
magne du Nord, de l'Autriche,  
Bade, la Bavière, la Belgique, le  
Danemark, la France, la Grande-

<sup>1</sup> The several contracting parties to the said convention exchanged the ratifications thereof at Geneva, on the 22d day of June, 1865.

The several States hereinafter named have signified their adherence to the above convention in virtue of Article IX, on the dates as noted in the following list:

Sweden .....	December 13, 1864.
Greece .....	January 5-17, 1865.
Great Britain .....	February 18, 1865.
Mecklenburg-Schwerin .....	March 9, 1865.
Turkey .....	July 5, 1865.
Württemberg .....	June 2, 1866.
Hesse .....	June 22, 1866.
Bavaria .....	June 30, 1866.
Austria .....	July 21, 1866.
Russia .....	May 10-22, 1867.
Persia .....	December 5, 1874.
Roumania .....	November 18-30, 1874.
Salvador .....	December 30, 1874.
Montenegro .....	November 17-29, 1875.
Servia .....	March 24, 1876.
Bolivia .....	October 16, 1879.
Chili .....	November 15, 1879.
Argentine Republic .....	November 25, 1879.
Peru .....	April 22, 1880.

<sup>2</sup> On the 20th of October, 1868, the above additional articles were proposed and signed at Geneva on behalf of Great Britain, Austria, Baden, Bavaria, Belgium, Denmark, France, Italy, Netherlands, North Germany, Sweden and Norway, Switzerland, Turkey, and Württemberg.

Sweden and Norway, Switzerland, Turkey, and Württemberg, desiring to extend to armies on the sea the advantages of the Convention concluded at Geneva the 22d of August, 1864, for the amelioration of the condition of wounded soldiers in armies in the field, and to further particularize some of the stipulations of the said Convention, have named for their commissioners:

1. North Germany: Henri de Røder, Lieutenant-General, Envoy Extraordinary and Minister Plenipotentiary of His Majesty the King of Prussia and of the North Germanic Confederation to the Swiss Confederation, Knight of the Red Eagle, second class, &c., &c.; Frédéric Lœffler, Physician in Chief of the Army, Professor of Military Medicine, Knight of the Order of the Crown, second class, with crossed swords, &c., &c.; Henry Köhler, Naval Captain, Chief of Division at the Ministry of the Navy, Knight of the Order of the Crown, third class, &c., &c.

2. Austria: Dr. Jaromir, Baron Mundy, Staff Physician of first class, Commander of the Order of His Majesty Emperor Francis Joseph of Austria, King of Hungary.

3. Baden: Adolphe Steiner, Chief Staff Physician, Knight of the first class of the order of the Lion of Zähringen, with oak-leaf.

4. Bavaria: Theodore Dompierre, Chief Physician of first class, Knight of the order of St. Michael.

5. Belgium: Auguste Visschers, Councillor of the Council of Mines of Belgium, Officer of the Order of Léopold.

6. Denmark: John Barthélemy Gaïfre Galiffe, L. D., Consul of His Majesty the King of Denmark to the Swiss Confederation, Knight of the Order of Danebrog and of

Bretagne, l'Italie, les Pays-Bas, Suède et Norvège, la Suisse, la Turquie, le Wurtemberg, désirant étendre aux armées de mer les avantages de la Convention conclue à Genève, le 22 août 1864, pour l'amélioration du sort des militaires blessés dans les armées en campagne, et préciser davantage quelques-unes des stipulations de la dite Convention, ont nommé pour leurs Commissaires:

1. Allemagne du Nord: Le Sieur Henri de Røder, Lieutenant-Général, Envoyé Extraordinaire et ministre plénipotentiaire de sa Majesté le Roi de Prusse et de la Confédération de l'Allemagne du Nord près la Confédération suisse, Chevalier de l'aigle rouge, 2<sup>de</sup> classe, &c., &c.; Le Sieur Frédéric Lœffler, médecin général de l'armée, Professeur de médecine militaire, Chevalier de l'ordre de la Couronne, 2<sup>de</sup> classe, croisé d'épées, &c., &c.; Le Sieur Henry Köhler, Capitaine de vaisseau, Chef de section au ministère de la Marine, Chevalier de l'ordre de la Couronne, 3<sup>me</sup> classe, &c., &c.

2. Autriche: Le Sieur Jaromir, baron Mundy, Docteur en médecine et chirurgie, Médecin-Major de première classe, Commandeur de l'ordre de S. M. l'Empereur François-Joseph d'Autriche, Roi de Hongrie.

3. Bade: Le Sieur Adolphe Steiner, Médecin d'État-Major, Chevalier de 1<sup>re</sup> classe de l'ordre du Lion de Zähringen, avec feuille de Chêne.

4. Bavière: Le Sieur Théodore Dompierre, Médecin principal de 1<sup>re</sup> classe, Chevalier de l'ordre de St. Michel.

5. Belgique: Le Sieur Auguste Visschers, Conseiller au Conseil des mines de Belgique, Officier de l'ordre de Léopold.

6. Danemark: Le Sieur John Barthélemy Gaïfre Galiffe, Docteur en droit, Consul de S. M. le Roi de Danemark près la Confédération suisse, Chevalier de l'ordre

the Order of Saints Maurice and Lazarus.

7. France: Auguste Coupvent des Bois, Rear-Admiral, Commander of the imperial order of the Legion of Honor, &c., &c.; Henri Eugène Segueineau de Préval, military subcommissioner of first class, officer of the imperial order of the Legion of Honor, &c., &c.

8. Great Britain: John Saville Lumley, Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the Swiss Confederation; Hastings Reginald Yelverton, Rear-Admiral in the service of Her Britannic Majesty, Companion of the Order of the Bath.

9. Italy: Felix Baroffio, Physician in Chief, Knight of the Order of Saints Maurice and Lazarus, of the Order of the Crown of Italy; Paul Cottrau, Captain of frigate, Knight of the Order of Saints Maurice and Lazarus, decorated with the silver medal of military Valor.

10. The Netherlands: Jonkheer Hermann Adrien Karnebeek, Vice-Admiral, Aide-de-camp extraordinary to His Majesty the King of the Netherlands, decorated with the civil and military orders and the crosses and medals of 1815, of 1830 of the Netherlands, and of the campaigns of Java, Grand Cross of the military orders of Christ and of Tunis, Grand Officer of the Order of Charles the Third of Spain, Commander of the Orders of St. Anne of Russia, in diamonds, of Leopold of Belgium and of the Falcon of Saxe-Weimar, Knight of the Legion of Honor, decorated with the medal of St. Helena; Bernhard Ortuinus Theodore Henri Westenberg, L. D., Councillor, of Legation of His Majesty the King of the Netherlands, Commander of the Oaken Crown, Grand Commander of the Order of St. Michael of Bavaria, Knight of the Orders of Charles III. of Spain, of the Crown of Prussia, of Dane-

du Danebrog et de celui des SS. Maurice et Lazare.

7. France: Le Sieur Auguste Coupvent des Bois, Contre-Amiral, Commandeur de l'ordre impérial de la Légion d'honneur, &c., &c.; Le Sieur Henri Eugène Segueineau de Préval, sous-intendant militaire de 1<sup>re</sup> classe, officier de l'ordre impérial de la Légion d'honneur, &c., &c.

8. Grande-Bretagne: Le Sieur John Saville Lumley, Envoyé extraordinaire et Ministre plénipotentiaire de Sa Majesté Britannique près la Confédération suisse; Le Sieur Hastings Reginald Yelverton, Contre-Amiral au service de S. M. Britannique, Compagnon de l'ordre du Bain.

9. Italie: Le Sieur Felix Baroffio, Médecin-directeur, Chevalier de l'ordre des SS. Maurice et Lazare, de l'ordre de la Couronne d'Italie; Le Sieur Paul Cottrau, Capitaine de frégate, Chevalier de l'ordre des SS. Maurice et Lazare, décoré de la médaille d'argent à la Valeur Militaire.

10. Pays-Bas: Le Sieur Jonkheer Hermann Adrien van Karnebeek, Vice-Amiral, Aide-de-camp en service extraordinaire de S. M. le Roi des Pays-Bas, décoré des ordres militaire et civil et des croix et médailles de 1815, de 1830 Néerlandais et des campagnes de Java, Grand-Croix de l'ordre militaire du Christ et de celui de Tunis, Grand-Officier de l'ordre de Charles III. d'Espagne, Commandeur des ordres de St. Anne en diamant de Russie, de Léopold de Belgique et du Faucon de Saxe-Weimar, Chevalier de la Légion d'honneur, décoré de la médaille de St. Hélène; Le Sieur Bernhard Ortuinus Théodore Henri Westenberg, docteur en droit, Conseiller de Légation de S. M. le Roi des Pays-Bas, Commandeur de la Couronne de Chêne, Grand-Commandeur de l'ordre de St. Michel de Bavière, Chevalier de l'ordre de Charles III. d'Espagne, de la Couronne de Prusse, du Danebrog

brog, of Denmark, and of Adolphe of Nassau.

11. Sweden and Norway: Ferdinand Nathaniel Staaff, Lieutenant Colonel, military attaché of the Legation of Sweden and Norway in Paris, Knight of the Royal Orders of the Sword of Sweden and of Saint Olaf of Norway, officer of the imperial order of the Legion of Honor, as well of Public Instruction in France, Knight of the imperial order of the Iron Crown of Austria, &c., &c.

12. Switzerland: Guillaume Henri Dufour, ex-general in chief of the federal army, Grand Cross of the Legion of Honor; Gustave Moynier, President of the International Committee for the relief of the wounded, officer of the order of Saints Maurice and Lazarus, Knight of first class of the Order the Lion of Zähringen, Knight of the Orders of the Polar Star and of Our Lady of the Conception of Villa-Viçosa, &c., &c.; Samuel Lehmann, Federal Colonel, physician in chief of the federal army, member of the National Council.

13. Turkey: Husny Effendi, Major, military attaché of Turkey to Paris, decorated with the imperial order of Medjidié of the fifth class.

14. Würtemberg: Christophe Hahn, Doctor of philosophy and theology, member of the central direction for charitable institutions, President of the committee from Würtemberg for the wounded, Knight of the Order of Frédéric and of Saints Maurice and Lazarus; Édouard Fichte, M. D., physician in chief of the army of Würtemberg and Knight of the Order of Frederick and the Order of the Crown of Prussia, of third class;

de Danemark et d'Adolphe de Nassau.

11. Suède et Norvège: Le Sieur Ferdinand Nathanaël Staaff, Lieutenant Colonel, attaché militaire de la Légation de Suède et de Norvège à Paris, Chevalier des Ordres Royaux de l'Épée de Suède et de Saint-Olaf de Norvège, officier de l'Ordre Impérial de la Légion d'honneur ainsi que de l'instruction publique en France, Chevalier de l'Ordre Impérial de la Couronne de fer d'Autriche, &c., &c.

12. Suisse: Le Sieur Guillaume Henri Dufour, Grand-officier de l'Ordre Impérial de la Légion d'Honneur, ancien Général-en-chef de l'armée fédérale, ancien Membre du Conseil des États; Le Sieur Gustave Moynier, Président du Comité international de secours pour les militaires blessés et de la Société genevoise d'utilité publique; Le Sieur Samuel Lehmann, Colonel fédéral, Médecin en chef de l'armée fédérale, membre du Conseil National.

13. Turquie: Husny Effendi, Major, Attaché Militaire à l'Ambassade de Turquie à Paris, décoré de l'Ordre Impérial du Medjidié de 5<sup>me</sup> classe.

14. Wurtemberg: Le Sieur Christophe Hahn, Docteur en philosophie et théologie, membre de la direction centrale pour les établissements de bienfaisance, Président du comité wurtembergeois pour les militaires blessés; Chevalier des Ordres de Frédéric et des SS. Maurice et Lazare; Le Sieur Édouard Fichte, Docteur en médecine, médecin principal de l'armée wurtembergeoise, Chevalier de l'Ordre de Frédéric et de l'Ordre de la Couronne de Prusse de 3<sup>me</sup> classe;

Lesquels dûment autorisés à cet effet, sont convenus, sous réserve d'approbation de leurs Gouvernements, des dispositions suivantes: Additional stipulations.

Who, having been duly authorized to that effect, agreed, under reserve of approbation from their governments, to the following dispositions:

ARTICLE I. The persons designated in Article II. of the Convention  
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ARTICLE I. Le personnel désigné dans l'article deux de la Convention Rights of employees, etc., in hospitals or ambulances; their release and departure.

tion shall, after the occupation by the enemy, continue to fulfil their duties, according to their wants, to the sick and wounded in the ambulance or the hospital which they serve. When they request to withdraw, the commander of the occupying troops shall fix the time of departure, which he shall only be allowed to delay for a short time in case of military necessity.

Salary of neutrals, etc., when in enemy's hands.

ART. II. Arrangements will have to be made by the belligerent powers to ensure to the neutralized person, fallen into the hands of the army of the enemy, the entire enjoyment of his salary.

Definition of the term "ambulance."

ART. III. Under the conditions provided for in Articles I. and IV. of the Convention, the name "ambulance" applies to field hospitals and other temporary establishments, which follow the troops on the field of battle to receive the sick and wounded.

Charges for quartering of troops, and contributions, etc.

ART. IV. In conformity with the spirit of Article V. of the Convention, and to the reservations contained in the protocol of 1864, it is explained that for the appointment of the charges relative to the quartering of troops, and of the contributions of war, account only shall be taken in an equitable manner of the charitable zeal displayed by the inhabitants.

Wounded to be returned to their country on condition of not again bearing arms in the war.

ART. V. In addition to Article VI. of the Convention, it is stipulated that, with the reservation of officers whose detention might be important to the fate of arms and within the limits fixed by the second paragraph of that article, the wounded fallen into the hands of the enemy shall be sent back to their country, after they are cured, or sooner if possible, on condition, nevertheless, of not again bearing arms during the continuance of the war.

[Articles concerning the Marine.]

Boats picking up the ship wrecked or wounded, etc.

ART. VI. The boats which, at their own risk and peril, during and after an engagement pick up

tion continuera, après l'occupation par l'ennemi, à donner dans la mesure des besoins, ses soins aux malades et aux blessés de l'ambulance ou de l'hôpital qu'il dessert. Lorsqu'il demandera à se retirer, le commandant des troupes occupantes fixera le moment de ce départ, qu'il ne pourra toutefois différer que pour une courte durée en cas de nécessités militaires.

ART. II. Des dispositions devront être prises par les Puissances belligérantes pour assurer au personnel neutralisé, tombé entre les mains de l'armée ennemie, la jouissance intégrale de son traitement.

ART. III. Dans les conditions prévues par les articles un et quatre de la Convention, la dénomination d'ambulance s'applique aux hôpitaux de campagne et autres établissements temporaires qui suivent les troupes sur les champs de bataille pour y recevoir des malades et des blessés.

ART. IV. Conformément à l'esprit de l'article cinq de la Convention et aux réserves mentionnées au Protocole de 1864, il est expliqué que pour la répartition des charges relatives au logement de troupes et aux contributions de guerre, il ne sera tenu compte que dans la mesure de l'équité du zèle charitable déployé par les habitants.

ART. V. Par extension de l'article six de la Convention, il est stipulé que sous la réserve des officiers dont la possession importerait au sort des armes, et dans les limites fixées par le deuxième paragraphe de cet article, les blessés tombés entre les mains de l'ennemi, lors même qu'ils ne seraient pas reconnus incapables de servir, devront être renvoyés dans leur pays après leur guérison, ou plus tôt si faire se peut, à la condition toutefois de ne pas reprendre les armes pendant la durée de la guerre.

Articles concernant la Marine.

ART. VI. Les embarcations qui, à leurs risques et périls, pendant et après le combat, recueillent ou

the shipwrecked or wounded, or which having picked them up, convey them on board a neutral or hospital ship, shall enjoy, until the accomplishment of their mission, the character of neutrality, so far as the circumstances of the engagement and the position of the ships engaged will permit.

The appreciation of these circumstances is entrusted to the humanity of all the combatants. The wrecked and wounded thus picked and saved must not serve again during the continuance of the war.

ART. VII. The religious, medical, and hospital staff of any captured vessel are declared neutral, and, on leaving the ship, may remove the articles and surgical instruments which are their private property.

ART. VIII. The staff designated in the preceding article must continue to fulfil their functions in the captured ship, assisting in the removal of the wounded made by the victorious party; they will then be at liberty to return to their country, in conformity with the second paragraph of the first additional article.

The stipulations of the second additional article are applicable to the pay and allowance of the staff.

ART. IX. The military hospital ships remain under martial law in all that concerns their stores; they become the property of the captor, but the latter must not divert them from their special appropriation during the continuance of the war.

<sup>1</sup>[The vessels not equipped for fighting, which, during peace, the government shall have officially declared to be intended to serve as floating hospital ships, shall, however, enjoy

qui, ayant recueilli des naufragés ou des blessés, les portent à bord d'un navire soit neutre, soit hospitalier, jouiront jusqu'à l'accomplissement de leur mission de la part de neutralité que les circonstances du combat et la situation des navires en conflit permettront de leur appliquer.

L'appréciation de ces circonstances est confiée à l'humanité de tous les combattants. Les naufragés et les blessés ainsi recueillis et sauvés ne pourront servir pendant la durée de la guerre.

ART. VII. Le personnel religieux, médical et hospitalier de tout bâtiment capturé, est déclaré neutre. Il emporte, en quittant le navire, les objets et les instruments de chirurgie qui sont sa propriété particulière.

Religious, medical, and hospital staff of a captured vessel declared neutral.

ART. VIII. Le personnel désigné dans l'article précédent doit continuer à remplir ses fonctions sur le bâtiment capturé, concourir aux évacuations de blessés faites par le vainqueur, puis il doit être libre de rejoindre son pays, conformément au second paragraphe du premier article additionnel ci-dessus.

Duties of staff officers, etc.

Les stipulations du deuxième article additionnel ci-dessus sont applicables au traitement de ce personnel.

Pay and allowance of staff.

ART. IX. Les bâtiments hospitaliers militaires restent soumis aux lois de la guerre, en ce qui concerne leur matériel; ils deviennent la propriété du capteur, mais celui-ci ne pourra les détourner de leur affection spéciale pendant la durée de la guerre.

Captured hospital ships to remain under martial law, etc.; not to be used for other purposes.

<sup>1</sup>In the published English text, from which this version of the Additional Articles is taken, the paragraph thus marked in brackets appears in continuation of Article IX. It is not, however, found in the original French text adopted by the Geneva conference, October 20, 1868.

By an instruction sent to the United States minister at Berne, January 20, 1883, the right is reserved to omit this paragraph from the English text, and to make any other necessary corrections, if at any time hereafter the Additional Articles shall be completed by the exchange of the ratifications hereof between the several signatory and adhering powers.

*during the war complete neutrality, both as regards stores, and also as regards their staff, provided their equipment is exclusively appropriated to the special service on which they are employed.]*

Merchant vessels performing hospital duty to be treated as neutral; visited by enemy's cruiser rendering sick and wounded incapacitated from further war service.

ART. X. Any merchantman, to whatever nation she may belong, charged exclusively with removal of sick and wounded, is protected by neutrality, but the mere fact, noted on the ship's books, of the vessel having been visited by an enemy's cruiser, renders the sick and wounded incapable of serving during the continuance of the war. The cruiser shall even have the right of putting on board an officer in order to accompany the convoy, and thus verify the good faith of the operation.

Cargo of merchant ship protected; when, proviso.

If the merchant ship also carries a cargo, her neutrality will still protect it, provided that such cargo is not of a nature to be confiscated by the belligerents.

Right of belligerents.

The belligerents retain the right to interdict neutralized vessels from all communication, and from any course which they may deem prejudicial to the secrecy of their operations. In urgent cases special conventions may be entered into between commanders-in-chief, in order to neutralize temporarily and in a special manner the vessels intended for the removal of the sick and wounded.

Wounded or sick sailors and soldiers, when embarked, etc.

ART. XI. Wounded or sick sailors and soldiers, when embarked, to whatever nation they may belong, shall be protected and taken care of by their captors.

Return to native country.

Their return to their own country is subject to the provisions of Article VI. of the Convention, and of the additional Article V.

White flag with red cross, etc., used by vessels claiming neutrality.

ART. XII. The distinctive flag to be used with the national flag, in order to indicate any vessel or boat which may claim the benefits of neutrality, in virtue of the principles of this Convention, is a white flag with a red cross. The belligerents may exercise in this

ART. X. Tout bâtiment de commerce à quelque nation qu'il appartienne, chargé exclusivement de blessés et de malades dont il opère l'évacuation, est couvert par la neutralité; mais le fait seul de la visite, notifié sur le journal du bord, par un croiseur ennemi, rend les blessés et les malades incapables de servir pendant la durée de la guerre. Le croiseur aura même le droit de mettre à bord un commissaire pour accompagner le convoi et vérifier ainsi la bonne foi de l'opération.

Si le bâtiment de commerce contenait en outre un chargement, la neutralité le couvrirait encore pourvu que ce chargement ne fût pas de nature à être confisqué par le belligérant.

Les belligérants conservent le droit d'interdire aux bâtiments neutralisés toute communication et toute direction qu'ils jugeraient nuisibles au secret de leurs opérations. Dans les cas urgents, des conventions particulières pourront être faites entre les commandants-en-chef pour neutraliser momentanément d'une manière spéciale les navires destinés à l'évacuation des blessés et des malades.

ART. XI. Les marins et les militaires embarqués, blessés ou malades, à quelque nation qu'ils appartiennent, seront protégés et soignés par les capteurs.

Leur rapatriement est soumis aux prescriptions de l'article six de la Convention et de l'article cinq additionnel.

ART. XII. Le drapeau distinctif à joindre au pavillon national pour indiquer un navire ou une embarcation quelconque qui réclame le bénéfice de la neutralité, en vertu des principes de cette Convention, est le pavillon blanc à croix rouge. Les belligérants exercent à cet

respect any mode of verification which they may deem necessary.

Military hospital ships shall be distinguished by being painted white outside, with green strake.

ART. XIII. The hospital ships which are equipped at the expense of the aid societies, recognized by the governments signing this Convention, and which are furnished with a commission emanating from the sovereign, who shall have given express authority for their being fitted out, and with a certificate from the proper naval authority that they have been placed under his control during their fitting out and on their final departure, and that they were then appropriated solely to the purpose of their mission, shall be considered neutral, as well as the whole of their staff. They shall be recognized and protected by the belligerents.

They shall make themselves known by hoisting, together with their national flag, the white flag with a red cross. The distinctive mark of their staff, while performing their duties, shall be an armlet of the same colors. The outer painting of these hospital ships shall be white, with red strake.

These ships shall bear aid and assistance to the wounded and wrecked belligerents, without distinction of nationality.

They must take care not to interfere in any way with the movements of the combatants. During and after the battle they must do their duty at their own risk and peril.

The belligerents shall have the right of controlling and visiting them; they will be at liberty to refuse their assistance, to order them to depart, and to detain them if the exigencies of the case require such a step.

The wounded and wrecked picked up by these ships cannot be reclaimed by either of the combatants, and they will be required not to serve during the continuance of the war.

égard toute vérification qu'ils jugent nécessaire.

Les bâtiments hôpitaux militaires seront distingués par une peinture extérieure blanche avec batterie verte.

ART. XIII. Les navires hospitaliers, équipés aux frais des sociétés de secours reconnues par les Gouvernements signataires de cette Convention, pourvus de commission émanée du Souverain qui aura donné l'autorisation expresse de leur armement, et d'un document de l'autorité maritime compétente, stipulant qu'ils ont été soumis à son contrôle pendant leur armement et à leur départ final, et qu'ils étaient alors uniquement appropriés au but de leur mission, seront considérés comme neutres ainsi que tout leur personnel. Ils seront respectés et protégés par les belligérants.

Ils se feront reconnaître en hissant avec leur pavillon national, le pavillon blanc à croix rouge. La marque distinctive de leur personnel dans l'exercice de ses fonctions sera un brassard aux mêmes couleurs; leur peinture extérieure sera blanche avec batterie rouge.

Ces navires porteront secours et assistance aux blessés et aux naufragés des belligérants sans distinction de nationalité.

Ils ne devront gêner en aucune manière les mouvements des combattants. Pendant et après le combat, ils agiront à leurs risques et périls.

Les belligérants auront sur eux le droit de contrôle et de visite; ils pourront refuser leur concours, leur enjoindre de s'éloigner et les détenir si la gravité des circonstances l'exigeait.

Les blessés et les naufragés recueillis par ces navires ne pourront être réclamés par aucun des combattants, et il leur sera imposé de ne pas servir pendant la durée de la guerre.

Military hospitals painted white, etc.

Hospital ships, etc., and staff to be treated as neutral.

Flag sign, etc., of neutrality.

Aid and assistance to wounded and wrecked belligerents, without distinction of nationality.

Rights of belligerents to control and visit vessels, etc.

Wounded and wrecked picked up, etc., can not be reclaimed.



Right of belligerents to suspend convention, etc.

ART. XIV. In naval wars any strong presumption that either belligerent takes advantage of the benefits of neutrality, with any other view than the interest of the sick and wounded, gives to the other belligerent, until proof to the contrary, the right of suspending the Convention, as regards such belligerent.

Notice of suspension of Convention, etc., to be given.

Should this presumption become a certainty, notice may be given to such belligerent that the Convention is suspended with regard to him during the whole continuance of the war.

Act embodied in one original copy and deposited in archives of Swiss Confederation.

ART. XV. The present Act shall be drawn up in a single original copy, which shall be deposited in the Archives of the Swiss Confederation.

Authentic copy to be delivered to signatory powers, etc.

An authentic copy of this Act shall be delivered, with an invitation to adhere to it, to each of the signatory Powers of the Convention of the 22d of August, 1864, as well as to those that have successively acceded to it.

In faith whereof, the undersigned commissaries have drawn up the present project of additional articles and have apposed thereunto the seals of their arms.

Seals of commissaries.

[*Done at Geneva, the twentieth day of the month of October, of the year one thousand eight hundred and sixty-eight.*]<sup>1</sup>

VON RÆDER.  
F. LÖFFLER.  
KÖHLER.  
DR. MUNDY.  
STEINER.  
DR. DOMPIERRE.  
VISSCHERS.  
J. B. G. GALIFFE.  
A. COUPVENT DES BOIS.  
H. DE PRÉVAL.  
JOHN SAVILLE LUMLEY.  
H. R. YELVERTON.  
D. FELICE BAROFFIO.  
PAOLO COTTRAU.  
H. A. VAN KARNEBEEK.  
WESTENBERG.  
F. N. STAAFF.  
G. H. DUFOUR.  
G. MOYNIER.  
DR. S. LEHMANN.  
HUSNY.  
DR. C. HAHN.  
DR. FICHTE.

ART. XIV. Dans les guerres maritimes, toute forte présomption que l'un des belligérants profite du bénéfice de la neutralité dans un autre intérêt que celui des blessés et des malades, permet à l'autre belligérant, jusqu'à preuve du contraire, de suspendre la Convention à son égard.

Si cette présomption devient une certitude, la Convention peut même lui être dénoncée pour toute la durée de la guerre.

ART. XV. Le présent acte sera dressé en un seul exemplaire original qui sera déposé aux archives de la Confédération suisse.

Une copie authentique de cet acte sera délivrée, avec l'invitation d'y adhérer, à chacune des Puissances signataires de la Convention du 22 août 1864, ainsi qu'à celles qui y ont successivement accédé.

En foi de quoi les Commissaires soussignés ont dressé le présent Projet d'articles additionnels et y ont apposé le cachet de leurs armes.

Fait à Genève le vingtième jour du mois d'octobre de l'an mil huit cent soixante-huit.<sup>1</sup>

VON RÆDER.  
F. LÖFFLER.  
KÖHLER.  
DR. MUNDY.  
STEINER.  
DR. DOMPIERRE.  
VISSCHERS.  
J. B. G. GALIFFE.  
A. COUPVENT DES BOIS.  
H. DE PRÉVAL.  
JOHN SAVILLE LUMLEY.  
H. R. YELVERTON.  
D. FELICE BAROFFIO.  
PAOLO COTTRAU.  
H. A. VAN KARNEBEEK.  
WESTENBERG.  
F. N. STAAFF.  
G. H. DUFOUR.  
G. MOYNIER.  
DR. S. LEHMANN.  
HUSNY.  
DR. C. HAHN.  
DR. FICHTE.

<sup>1</sup> The proclamation of the President of the United States promulgating the original treaty and the articles additional thereto bears date July 26, 1882 (22 Stat. L., 126).

AGREEMENT<sup>1</sup>

BETWEEN RICHARD OLNEY, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA, AND MATIAS ROMERO, ENVOY EXTRAORDINARY AND MINISTER PLENIPOTENTIARY OF THE UNITED MEXICAN STATES.

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*Signed at Washington, June 4, 1896.*

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<p>Agreement entered into in behalf of their respective Governments by Richard Olney, Secretary of State of the United States of America, and Matias Romero, Envoy Extraordinary and Minister Plenipotentiary of the United Mexican States, providing for the reciprocal crossing of the international boundary line by the troops of their respective governments, in pursuit of Kid's band of hostile Indians, on the conditions hereinafter stated.</p>	<p>Convenio celebrado en nombre de sus respectivos Gobiernos por el Señor Richard Olney, Secretario de Estado de los Estados Unidos de América, y el Señor Don Matías Romero, Enviado Extraordinario y Ministro Plenipotenciario de los Estados Unidos Mexicanos, autorizando el paso recíproco provisional de la línea divisoria internacional, de tropas de sus respectivos Gobiernos, en persecución de la banda de Indios sublevados de Kid, bajo las restricciones que en seguida se expresan:</p>
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## ARTICLE I.

It is agreed that the regular federal troops of the two Republics may reciprocally cross the boundary line of the two countries when they are in close pursuit of Kid's band of hostile Indians on the conditions stated in the following articles.

## ARTÍCULO I.

Se conviene en que las tropas federales regulares de las dos Repúblicas pasen recíprocamente la línea divisoria entre los dos países cuando vayan persiguiendo de cerca la banda de Indios sublevados de Kid con arreglo á las condiciones que se expresan en los artículos siguientes:

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<sup>1</sup>Published in General Orders 24, Adjutant-General's Office, 1896. For a similar agreement, see volume 22, Statutes at Large, page 126.

## ARTICLE II.

It is understood for the purpose of this agreement, that no Indian scout of the Government of the United States of America shall be allowed to cross the boundary line, unless he goes as a guide and trailer, unarmed and with the proviso that, in no case, more than two scouts shall attend each Company or detachment.

## ARTÍCULO II.

Para los efectos de este convenio queda entendido que no se permitirá á ningún explorador indio (scout) del Gobierno de los Estados Unidos de América cruzar la línea divisoria, á no ser que vaya sin armas y como guía y práctico en las huellas, y en el concepto de que en ningún caso acompañarán más de dos indios exploradores (scouts) á cada compañía ó cada destacamento.

## ARTICLE III.

The reciprocal crossing agreed upon in Article I shall only take place in the uninhabited or desert parts of said boundary line. For the purposes of this agreement the uninhabited or desert parts are defined to be all points that are at least ten kilometers distant from any encampment or town of either country.

## ARTÍCULO III.

El paso recíproco convenido en el artículo I no podrá hacerse sino por la parte despoblada y desierta de dicha línea divisoria. Para los efectos de este convenio se entienden por partes despobladas ó desiertas todos aquellos puntos distantes por lo menos diez kilómetros de cualquier campamento ó población de ambos países.

## ARTICLE IV.

No crossing of troops of either country shall take place from Capitán Leal, a town on the Mexican side of the Rio Grande, eighty-four kilometers (52 English miles) above Piedras Negras, to the mouth of the Rio Grande.

## ARTÍCULO IV.

El paso de tropas de uno ú otro país no podrá tener lugar desde Capitán Leal, población en el lado mexicano del Rio Bravo á ochenta y cuatro kilómetros (52 milas inglesas) rio arriba de Piedras Negras, hasta la embocadura del Rio Bravo del Norte.

## ARTICLE V.

The Commander of troops crossing the frontier in pursuit of Indians, shall, at the

## ARTÍCULO V.

El Jefe de las fuerzas que pasen la frontera en persecución de Indios, deberá, al

time of crossing, or before if possible, give notice of his march to the nearest military commander, or civil authority, of the country whose territory he is about to enter.

crusar la línea divisoria ó antes si fuere posible, dar aviso de su marcha al Jefe militar ó á la autoridad civil más próxima del país á cuyo territorio va á entrar.

## ARTICLE VI.

The pursuing force shall retire to its own territory as soon as it shall have chastised Kid's band of hostile Indians, or have lost its trail; but if, during the pursuit of that band, it shall meet with other hostile Indians, it may chastise them as if those first named were concerned. In no case shall the forces of the two countries, respectively, establish themselves or remain in the foreign territory for any time longer than is necessary to enable them to pursue the band whose trail they are following.

The temporary loss of the trail, owing to rain or any other accident, shall not be deemed sufficient cause for abandoning the pursuit or for withdrawing the pursuing force, when there is a reasonable prospect of soon finding the trail again by means of a continued movement.

## ARTICLE VII.

Any abuses that may be committed by the forces crossing into the territory of the other nation, shall be punished by the Government to which such forces belong, according to the gravity of

## ARTÍCULO VI.

La fuerza perseguidora se retirará á su país tan luego como haya batido á la banda de indios sublevados de Kid ó perdido su huella; pero si durante la persecución de esta banda encontrare otros indios sublevados, podrá batirlos como si se tratara de aquéllos. En ningún caso podrán las fuerzas de los dos países, respectivamente, establecerse en territorio extranjero, ni permanecer en él más tiempo que és necesario para hacer la persecución de la partida cuya huella sigan.

La interrupción temporal de la huella, por la lluvia ú otro accidente, no debe ser motivo para abandonar la persecución ni para retirar la fuerza perseguidora, cuando haya una perspectiva racional de volver á encontrar pronto esa huella por medio de un movimiento continuado.

## ARTÍCULO VII.

Los abusos que cometan las fuerzas que pasen al territorio de la otra nación, serán castigados, según la gravedad de la ofensa y con arreglo á sus leyes, por el Gobierno de quien dependan,

the offence and in conformity with its laws, as if the abuses had been committed in its own territory, the said Government being further under obligation to withdraw the guilty parties from the frontier.

#### ARTICLE VIII.

In the case of offences committed by the inhabitants of one country against the force of the other that may be within the limits of the former, the Government of said country shall only be responsible to the Government of the other for denial of justice in the punishment of the guilty parties.

#### ARTICLE IX.

This provisional agreement shall remain in force until Kid's band of hostile Indians shall be wholly exterminated or rendered obedient to one of the two Governments.

#### ARTICLE X.

The Senate of the United Mexican States having authorized the President to conclude this agreement, it shall take effect immediately.

In testimony whereof we have signed this agreement this 4th day of June, 1896.

como si fuesen cometidos en su propio territorio, quedando siempre obligado el mismo Gobierno á retirar de la frontera á los culpables.

#### ARTÍCULO VIII.

En los casos de delitos cometidos por los habitantes de un país contra la fuerza del otro, que esté dentro de los límites del primero, el Gobierno de este país solo es responsable para con el otro Gobierno por denegación de justicia en el castigo de los culpables.

#### ARTÍCULO IX.

Este Convenio provisional permanecerá en vigor mientras la banda de indios sublevados de Kid no fuere completamente exterminada ó reducida á la obediencia de uno de los dos Gobiernos.

#### ARTÍCULO X.

Habiendo el Senado de los Estados Unidos Mexicanos autorizado al Presidente para celebrar este Convenio, comenzará á tener efecto desde esta fecha.

En testimonio de lo cual hemos firmado este Convenio el 4 de Junio, de 1896.

RICHARD OLNEY.  
M. ROMERO.

INSTRUCTIONS FOR THE GOVERNMENT OF ARMIES OF THE UNITED  
STATES IN THE FIELD.

GENERAL ORDERS, }  
No. 100.

WAR DEPARTMENT,  
ADJUTANT-GENERAL'S OFFICE,  
Washington, April 24, 1863.

The following "Instructions for the government of armies of the United States in the field," prepared by Francis Lieber, LL. D., and revised by a board of officers, of which Maj. Gen. E. A. Hitchcock is president, having been approved by the President of the United States, he commands that they be published for the information of all concerned.

By order of the Secretary of War:

E. D. TOWNSEND,  
*Assistant Adjutant-General.*

\* \* \* \* \*

SECTION I.

*Martial law—Military jurisdiction—Military necessity—Retaliation.*

1. A place, district, or country occupied by an enemy stands, in consequence of the occupation, under the martial law of the invading or occupying army, whether any proclamation declaring martial law or any public warning to the inhabitants has been issued or not. Martial law is the immediate and direct effect and consequence of occupation or conquest.

The presence of a hostile army proclaims its martial law.

2. Martial law does not cease during the hostile occupation, except by special proclamation ordered by the commander-in-chief, or by special mention in the treaty of peace concluding the war, when the occupation of a place or territory continues beyond the conclusion of peace as one of the conditions of the same.

3. Martial law in a hostile country consists in the suspension, by the occupying military authority, of the criminal and civil law, and of the domestic administration and government in the occupied place or territory, and in the substitution of military rule and force for the same, as well as in the dictation of general laws, as far as military necessity requires this suspension, substitution, or dictation.

The commander of the forces may proclaim that the administration of all civil and penal law shall continue either wholly or in part, as in times of peace, unless otherwise ordered by the military authority.

4. Martial law is simple military authority exercised in accordance with the laws and usages of war. Military oppression is not martial law; it is the abuse of the power which the law confers. As martial law is executed by military force, it is incumbent upon those who administer it to be strictly guided by the principles of justice, honor, and humanity—virtues adorning a soldier even more than other men, for the very reason that he possesses the power of his arms against the unarmed.

5. Martial law should be less stringent in places and countries fully occupied and fairly conquered. Much greater severity may be exercised in places or regions where actual hostilities exist, or are expected and must be prepared for. Its most complete sway is allowed—even in the commander's own country—when face to face with the enemy, because of the absolute necessities of the case, and of the paramount duty to defend the country against invasion.

To save the country is paramount to all other considerations.

6. All civil and penal law shall continue to take its usual course in the enemy's places and territories under martial law, unless interrupted or stopped by order of the occupying military power; but all the functions of the hostile government—legislative, executive, or administrative—whether of a general, provincial, or local character, cease under martial law, or continue only with the sanction, or, if deemed necessary, the participation, of the occupier or invader.

7. Martial law extends to property and to persons, whether they are subjects of the enemy or aliens to that Government.

8. Consuls, among American and European nations, are not diplomatic agents. Nevertheless, their offices and persons will be subjected to martial law in cases of urgent necessity only; their property and business are not exempted. Any delinquency they commit against the established military rule may be punished as in the case of any other inhabitant, and such punishment furnishes no reasonable ground for international complaint.

9. The functions of ambassadors, ministers, or other diplomatic agents accredited by neutral powers to the hostile government cease, so far as regards the displaced government; but the conquering or occupying power usually recognizes them as temporarily accredited to itself.

10. Martial law affects chiefly the police and collection of public revenue and taxes, whether imposed by the expelled government or by the invader, and refers mainly to the support and efficiency of the army, its safety, and the safety of its operations.

11. The law of war does not only disclaim all cruelty and bad faith concerning engagements concluded with the enemy during the war, but also the breaking of stipulations solemnly contracted by the belligerents in time of peace, and avowedly intended to remain in force in case of war between the contracting powers.

It disclaims all extortions and other transactions for individual gain; all acts of private revenge, or connivance at such acts.

Offenses to the contrary shall be severely punished, and especially so if committed by officers.

12. Whenever feasible, martial law is carried out in cases of individual offenders by military courts; but sentences of death shall be executed only with the approval of the chief executive, provided the urgency of the case does not require a speedier execution, and then only with the approval of the chief commander.

13. Military jurisdiction is of two kinds: First, that which is conferred and defined by statute; second, that which is derived from the common law of war. Military offenses under the statute law must be tried in the manner therein directed; but military offenses which do not come within the statute must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depends upon the local laws of each particular country.

In the armies of the United States the first is exercised by courts-martial, while cases which do not come within the Rules and Articles of War, or the jurisdiction conferred by statute or courts-martial, are tried by military commissions.

14. Military necessity, as understood by modern civilized nations, consists in the necessity of those measures which are indispensable for securing the ends of the war, and which are lawful according to the modern law and usages of war.

15. Military necessity admits of all direct destruction of life or limb of *armed* enemies, and of other persons whose destruction is incidentally *unavoidable* in the armed contests of the war; it allows of the capturing of every armed enemy and every enemy of importance to the hostile government or of peculiar danger to the captor; it allows of all destruction of property and obstruction of the ways and channels of traffic, travel, or communication, and of all withholding of sustenance or means of life from the enemy; of the appropriation of whatever an enemy's country affords necessary for the subsistence and safety of the army, and of such deception as does not involve the breaking of good faith, either positively pledged, regarding agreements entered into during the war, or supposed by the modern law of war to exist. Men who take up arms against one another in public war do not cease on this account to be moral beings, responsible to one another and to God.

16. Military necessity does not admit of cruelty—that is, the infliction of suffering for the sake of suffering or for revenge, nor of maiming or wounding except in fight, nor of torture to extort confessions. It does not admit of the use of poison in any way, nor of the wanton devastation of a district. It admits of deception, but disclaims acts of perfidy; and, in general, military necessity does not include any act of hostility which makes the return to peace unnecessarily difficult.

17. War is not carried on by arms alone. It is lawful to starve the



hostile belligerent, armed or unarmed, so that it leads to the speedier subjection of the enemy.

18. When a commander of a besieged place expels the noncombatants, in order to lessen the number of those who consume his stock of provisions, it is lawful, though an extreme measure, to drive them back, so as to hasten on the surrender.

19. Commanders, whenever admissible, inform the enemy of their intention to bombard a place, so that the noncombatants, and especially the women and children, may be removed before the bombardment commences. But it is no infraction of the common law of war to omit thus to inform the enemy. Surprise may be a necessity.

20. Public war is a state of armed hostility between sovereign nations or governments. It is a law and requisite of civilized existence that men live in political, continuous societies, forming organized units, called states or nations, whose constituents bear, enjoy and suffer, advance and retrograde together in peace and in war.

21. The citizen or native of a hostile country is thus an enemy, as one of the constituents of the hostile state or nation, and as such is subjected to the hardships of the war.

22. Nevertheless, as civilization has advanced during the last centuries, so has likewise steadily advanced, especially in war on land, the distinction between the private individual belonging to a hostile country and the hostile country itself, with its men in arms. The principle has been more and more acknowledged that the unarmed citizen is to be spared in person, property, and honor as much as the exigencies of war will admit.

23. Private citizens are no longer murdered, enslaved, or carried off to distant parts, and the inoffensive individual is as little disturbed in his private relations as the commander of the hostile troops can afford to grant in the overruling demands of a vigorous war.

24. The almost universal rule in remote times was, and continues to be with barbarous armies, that the private individual of the hostile country is destined to suffer every privation of liberty and protection and every disruption of family ties. Protection was, and still is with uncivilized people, the exception.

25. In modern regular wars of the Europeans, and their descendants in other portions of the globe, protection of the inoffensive citizen of the hostile country is the rule; privation and disturbance of private relations are the exceptions.

26. Commanding generals may cause the magistrate and civil officers of the hostile country to take the oath of temporary allegiance or an oath of fidelity to their own victorious government or rulers, and they may expel every one who declines to do so. But whether they do so or not, the people and their civil officers owe strict obedience to them as long as they hold sway over the district or country, at the peril of their lives.

27. The law of war can no more wholly dispense with retaliation than can the law of nations, of which it is a branch. Yet civilized nations acknowledge retaliation as the sternest feature of war. A reckless enemy often leaves to his opponent no other means of securing himself against the repetition of barbarous outrage.

28. Retaliation will, therefore, never be resorted to as a measure of mere revenge, but only as a means of protective retribution, and, moreover, cautiously and unavoidably; that is to say, retaliation shall only be resorted to after careful inquiry into the real occurrence and the character of the misdeeds that may demand retribution.

Unjust or inconsiderate retaliation removes the belligerents further and further from the mitigating rules of regular war, and by rapid steps leads them nearer to the internecine wars of savages.

29. Modern times are distinguished from earlier ages by the existence, at one and the same time, of many nations and great governments related to one another in close intercourse.

Peace is their normal condition; war is the exception. The ultimate object of all modern war is a renewed state of peace.

The more vigorously wars are pursued, the better it is for humanity. Sharp wars are brief.

30. Ever since the formation and coexistence of modern nations, and ever since wars have become great national wars, war has come to be acknowledged not to be its own end, but the means to obtain great ends of state, or to consist in defense against wrong; and no conventional restriction of the modes adopted to injure the enemy is any longer admitted; but the law of war imposes many limitations and restrictions on principles of justice, faith, and honor.

## SECTION II.

*Public and private property of the enemy—Protection of persons, and especially of women; of religion, the arts and sciences—Punishment of crime against the inhabitants of hostile countries.*

31. A victorious army appropriates all public money, seizes all public movable property until further direction by its government, and sequesters for its own benefit or that of its government all the revenues of real property belonging to the hostile government or nation. The title to such real property remains in abeyance during military occupation and until the conquest is made complete.

32. A victorious army, by the martial power inherent in the same, may suspend, change, or abolish, as far as the martial power extends, the relations which arise from the services due, according to the existing laws of the invaded country, from one citizen, subject, or native of the same to another.

The commander of the army must leave it to the ultimate treaty of peace to settle the permanency of this change.

33. It is no longer considered lawful—on the contrary, it is held to

be a serious breach of the law of war—to force the subjects of the enemy into the service of the victorious government, except the latter should proclaim, after a fair and complete conquest of the hostile country or district, that it is resolved to keep the country, district, or place permanently as its own and make it a portion of its own country.

34. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning, or observatories, museums of the fine arts, or of a scientific character—such property is not to be considered public property in the sense of paragraph 31, but it may be taxed or used when the public service may require it.

35. Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

36. If such works of art, libraries, collections, or instruments belonging to a hostile nation or government can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace.

In no case shall they be sold or given away if captured by the armies of the United States, nor shall they ever be privately appropriated or wantonly destroyed or injured.

37. The United States acknowledge and protect, in hostile countries occupied by them, religion and morality, strictly private property, the persons of the inhabitants, especially those of women, and the sacredness of domestic relations. Offenses to the contrary shall be rigorously punished.

This rule does not interfere with the right of the victorious invader to tax the people or their property, to levy forced loans, to billet soldiers, or to appropriate property, especially houses, lands, boats or ships, and churches, for temporary and military uses.

38. Private property, unless forfeited by crimes or by offenses of the owner, can be seized only by way of military necessity for the support or other benefit of the army or of the United States.

If the owner has not fled, the commanding officer will cause receipts to be given, which may serve the spoliated owner to obtain indemnity.

39. The salaries of civil officers of the hostile government who remain in the invaded territory, and continue the work of their office, and can continue it according to the circumstances arising out of the war—such as judges, administrative or police officers, officers of city or communal governments—are paid from the public revenue of the invaded territory until the military government has reason wholly or partially to discontinue it. Salaries or incomes connected with purely honorary titles are always stopped.

40. There exists no law or body of authoritative rules of action between hostile armies, except that branch of the law of nature and nations which is called the law and usages of war on land.

41. All municipal law of the ground on which the armies stand, or of the countries to which they belong, is silent and of no effect between armies in the field.

42. Slavery, complicating and confounding the ideas of property (that is, of a *thing*) and of personality (that is, of *humanity*), exists according to municipal or local law only. The law of nature and nations has never acknowledged it. The digest of the Roman law enacts the early dictum of the pagan jurist, that, "so far as the law of nature is concerned, all men are equal." Fugitives escaping from a country in which they were slaves, villains, or serfs, into another country, have, for centuries past, been held free and acknowledged free by judicial decisions of European countries, even though the municipal law of the country in which the slave had taken refuge acknowledged slavery within its own dominions.

43. Therefore, in a war between the United States and a belligerent which admits of slavery, if a person held in bondage by that belligerent be captured by or come as a fugitive under the protection of the military forces of the United States, such person is immediately entitled to the rights and privileges of a freeman. To return such person into slavery would amount to enslaving a free person, and neither the United States nor any officer under their authority can enslave any human being. Moreover, a person so made free by the law of war is under the shield of the law of nations, and the former owner or state can have, by the law of post liminy, no belligerent lien or claim of service.

44. All wanton violence committed against persons in the invaded country, all destruction of property not commanded by the authorized officer, all robbery, all pillage or sacking, even after taking a place by main force, all rape, wounding, maiming, or killing of such inhabitants, are prohibited under the penalty of death, or such other severe punishment as may seem adequate for the gravity of the offense.

A soldier, officer or private, in the act of committing such violence, and disobeying a superior ordering him to abstain from it, may be lawfully killed on the spot by such superior.

45. All captures and booty belong, according to the modern law of war, primarily to the government of the captor.

Prize money, whether on sea or land, can now only be claimed under local law.

46. Neither officers nor soldiers are allowed to make use of their position or power in the hostile country for private gain, not even for commercial transactions otherwise legitimate. Offenses to the contrary committed by commissioned officers will be punished with cashiering or such other punishment as the nature of the offense may require; if by soldiers, they shall be punished according to the nature of the offense.

47. Crimes punishable by all penal codes, such as arson, murder, maiming, assaults, highway robbery, theft, burglary, fraud, forgery, and rape, if committed by an American soldier in a hostile country against its inhabitants, are not only punishable as at home, but in all cases in which death is not inflicted the severer punishment shall be preferred.

### SECTION III.

#### *Deserters—Prisoners of war—Hostages—Booty on the battle-field.*

48. Deserters from the American Army, having entered the service of the enemy, suffer death if they fall again into the hands of the United States, whether by capture or being delivered up to the American Army; and if a deserter from the enemy, having taken service in the Army of the United States, is captured by the enemy, and punished by them with death or otherwise, it is not a breach against the law and usages of war requiring redress or retaliation.

49. A prisoner of war is a public enemy armed or attached to the hostile army for active aid, who has fallen into the hands of the captor, either fighting or wounded, on the field or in the hospital, by individual surrender or by capitulation.

All soldiers, of whatever species of arms; all men who belong to the rising *en masse* of the hostile country; all those who are attached to the army for its efficiency and promote directly the object of the war, except such as are hereinafter provided for; all disabled men or officers on the field or elsewhere, if captured; all enemies who have thrown away their arms and ask for quarter, are prisoners of war, and as such exposed to the inconveniences as well as entitled to the privileges of a prisoner of war.

50. Moreover, citizens who accompany an army for whatever purpose, such as sutlers, editors, or reporters of journals, or contractors, if captured, may be made prisoners of war, and be detained as such.

The monarch and members of the hostile reigning family, male or female, the chief, and chief officers of the hostile government, its diplomatic agents, and all persons who are of particular and singular use and benefit to the hostile army or its government, are, if captured on belligerent ground, and if unprovided with a safe conduct granted by the captor's government, prisoners of war.

51. If the people of that portion of an invaded country which is not yet occupied by the enemy, or of the whole country, at the approach of a hostile army, rise, under a duly authorized levy, *en masse* to resist the invader, they are now treated as public enemies, and, if captured, are prisoners of war.

52. No belligerent has the right to declare that he will treat every captured man in arms of a levy *en masse* as a brigand or bandit.

If, however, the people of a country, or any portion of the same, already occupied by an army rise against it, they are violators of the laws of war, and are not entitled to their protection.

53. The enemy's chaplains, officers of the medical staff, apothecaries, hospital nurses, and servants, if they fall into the hands of the American Army, are not prisoners of war unless the commander has reasons to retain them. In this latter case, or if, at their own desire, they are allowed to remain with their captured companions, they are treated as prisoners of war, and may be exchanged if the commander sees fit.

54. A hostage is a person accepted as a pledge for the fulfillment of an agreement concluded between belligerents during the war, or in consequence of a war. Hostages are rare in the present age.

55. If a hostage is accepted, he is treated like a prisoner of war, according to rank and condition, as circumstances may admit.

56. A prisoner of war is subject to no punishment for being a public enemy, nor is any revenge wreaked upon him by the intentional infliction of any suffering, or disgrace, by cruel imprisonment, want of food, by mutilation, death, or any other barbarity.

57. So soon as a man is armed by a sovereign government and takes the soldier's oath of fidelity, he is a belligerent; his killing, wounding, or other warlike acts are no individual crimes or offenses. No belligerent has a right to declare that enemies of a certain class, color, or condition, when properly organized as soldiers, will not be treated by him as public enemies.

58. The law of nations knows of no distinction of color, and if an enemy of the United States should enslave and sell any captured persons of their Army it would be a case for the severest retaliation, if not redressed upon complaint.

The United States can not retaliate by enslavement; therefore death must be the retaliation for this crime against the law of nations.

59. A prisoner of war remains answerable for his crimes committed against the captor's army or people, committed before he was captured, and for which he has not been punished by his own authorities.

All prisoners of war are liable to the infliction of retaliatory measures.

60. It is against the usage of modern war to resolve, in hatred and revenge, to give no quarter. No body of troops has the right to declare that it will not give, and therefore will not expect, quarter; but a commander is permitted to direct his troops to give no quarter, in great straits, when his own salvation makes it *impossible* to cumber himself with prisoners.

61. Troops that give no quarter have no right to kill enemies already disabled on the ground or prisoners captured by other troops.

62. All troops of the enemy known or discovered to give no quarter in general, or to any portion of the army, receive none.

63. Troops who fight in the uniform of their enemies, without any plain, striking, and uniform mark of distinction of their own, can expect no quarter.

64. If American troops capture a train containing uniforms of the enemy, and the commander considers it advisable to distribute them

for use among his men, some striking mark or sign must be adopted to distinguish the American soldier from the enemy.

65. The use of the enemy's national standard, flag, or other emblem of nationality for the purpose of deceiving the enemy in battle is an act of perfidy by which they lose all claim to the protection of the laws of war.

66. Quarter having been given to an enemy by American troops under a misapprehension of his true character, he may, nevertheless, be ordered to suffer death if within three days after the battle it be discovered that he belongs to a corps which gives no quarter.

67. The law of nations allows every sovereign government to make war upon another sovereign state, and therefore admits of no rules or laws different from those of regular warfare regarding the treatment of prisoners of war, although they may belong to the army of a government which the captor may consider as a wanton and unjust assailant.

68. Modern wars are not internecine wars, in which the killing of the enemy is the object. The destruction of the enemy in modern war, and, indeed, modern war itself, are means to obtain that object of the belligerent which lies beyond the war.

Unnecessary or revengeful destruction of life is not lawful.

69. Outposts, sentinels, or pickets are not to be fired upon, except to drive them in or when a positive order, special or general, has been issued to that effect.

70. The use of poison in any manner, be it to poison wells or food or arms, is wholly excluded from modern warfare. He that uses it puts himself out of the pale of the law and usages of war.

71. Whoever intentionally inflicts additional wounds on an enemy already wholly disabled or kills such an enemy, or who orders or encourages soldiers to do so, shall suffer death, if duly convicted, whether he belongs to the Army of the United States or is an enemy captured after having committed his misdeed.

72. Money and other valuables on the person of a prisoner, such as watches or jewelry, as well as extra clothing, are regarded by the American Army as the private property of the prisoner, and the appropriation of such valuables or money is considered dishonorable, and is prohibited.

Nevertheless, if *large* sums are found upon the persons of prisoners or in their possession they shall be taken from them, and the surplus, after providing for their own support, appropriated for the use of the Army, under the direction of the commander, unless otherwise ordered by the Government. Nor can prisoners claim as private property large sums found and captured in their train, although they have been placed in the private luggage of the prisoners.

73. All officers, when captured, must surrender their side arms to the captor. They may be restored to the prisoner in marked cases, by the commander, to signalize admiration of his distinguished bravery or



approbation of his humane treatment of prisoners before his capture. The captured officer to whom they may be restored can not wear them during captivity.

74. A prisoner of war, being a public enemy, is the prisoner of the government and not of the captor. No ransom can be paid by a prisoner of war to his individual captor or to any officer in command. The government alone releases captives, according to rules prescribed by itself.

75. Prisoners of war are subject to confinement or imprisonment, such as may be deemed necessary on account of safety, but they are to be subjected to no other intentional suffering or indignity. The confinement and mode of treating a prisoner may be varied during his captivity according to the demands of safety.

76. Prisoners of war shall be fed upon plain and wholesome food, whenever practicable, and treated with humanity.

They may be required to work for the benefit of the captor's government, according to their rank and condition.

77. A prisoner of war who escapes may be shot or otherwise killed in his flight, but neither death nor any other punishment shall be inflicted upon him simply for his attempt to escape, which the law of war does not consider a crime. Stricter means of security shall be used after an unsuccessful attempt at escape.

If, however, a conspiracy is discovered, the purpose of which is a united or general escape, the conspirators may be rigorously punished, even with death; and capital punishment may also be inflicted upon prisoners of war discovered to have plotted rebellion against the authorities of the captors, whether in union with fellow-prisoners or other persons.

78. If prisoners of war, having given no pledge nor made any promise on their honor, forcibly or otherwise escape, and are captured again in battle, after having rejoined their own army, they shall not be punished for their escape, but shall be treated simply as prisoners of war, although they will be subjected to stricter confinement.

79. Every captured wounded enemy shall be medically treated, according to the ability of the medical staff.

80. Honorable men, when captured, will abstain from giving to the enemy information concerning their own army, and the modern law of war permits no longer the use of any violence against prisoners in order to extort the desired information, or to punish them for having given false information.

#### SECTION IV.

*Partisans—Armed enemies not belonging to the hostile army—Scouts—Armed prowlers—War rebels.*

81. Partisans are soldiers armed and wearing the uniform of their army, but belonging to a corps which acts detached from the main body for the purpose of making inroads into the territory occupied by the



enemy. If captured, they are entitled to all the privileges of the prisoner of war.

82. Men, or squads of men, who commit hostilities, whether by fighting or inroads for destruction or plunder, or by raids of any kind, without commission, without being part and portion of the organized hostile army, and without sharing continuously in the war, but who do so with intermitting returns to their homes and avocations, or with the occasional assumption of the semblance of peaceful pursuits, divesting themselves of the character or appearance of soldiers—such men, or squads of men, are not public enemies, and, therefore, if captured are not entitled to the privileges of prisoners of war, but shall be treated summarily as highway robbers or pirates.

83. Scouts or single soldiers, if disguised in the dress of the country, or in the uniform of the army hostile to their own, employed in obtaining information, if found within or lurking about the lines of the captor, are treated as spies, and suffer death.

84. Armed prowlers, by whatever names they may be called, or persons of the enemy's territory, who steal within the lines of the hostile army for the purpose of robbing, killing, or of destroying bridges, roads, or canals, or of robbing or destroying the mail, or of cutting the telegraph wires, are not entitled to the privileges of the prisoner of war.

85. War rebels are persons within an occupied territory who rise in arms against the occupying or conquering army, or against the authorities established by the same. If captured, they may suffer death, whether they rise singly, in small or large bands, and whether called upon to do so by their own, but expelled, government or not. They are not prisoners of war; nor are they, if discovered and secured before their conspiracy has matured to an actual rising, or to armed violence.

#### SECTION V.

*Safe conduct—Spies—War traitors—Captured messengers—Abuse of the flag of truce.*

86. All intercourse between the territories occupied by belligerent armies, whether by traffic, by letter, by travel, or in any other way, ceases. This is the general rule, to be observed without special proclamation.

Exceptions to this rule, whether by safe conduct, or permission to trade on a small or large scale, or by exchanging mails, or by travel from one territory into the other, can take place only according to agreement approved by the government or by the highest military authority.

Contraventions of this rule are highly punishable.

87. Ambassadors, and all other diplomatic agents of neutral powers, accredited to the enemy, may receive safe conducts through the territories occupied by the belligerents, unless there are military reasons to the contrary, and unless they may reach the place of their destination conveniently by another route. It implies no international affront if

the safe conduct is declined. Such passes are usually given by the supreme authority of the state, and not by subordinate officers.

88. A spy is a person who secretly, in disguise or under false pretense, seeks information with the intention of communicating it to the enemy.

The spy is punishable with death by hanging by the neck, whether or not he succeed in obtaining the information or in conveying it to the enemy.

89. If a citizen of the United States obtains information in a legitimate manner, and betrays it to the enemy, be he a military or civil officer or a private citizen, he shall suffer death.

90. A traitor under the law of war, or a war traitor, is a person in a place or district under martial law who, unauthorized by the military commander, gives information of any kind to the enemy or holds intercourse with him.

91. The war traitor is always severely punished. If his offense consists in betraying to the enemy anything concerning the condition, safety, operations, or plans of the troops holding or occupying the place or district, his punishment is death.

92. If the citizen or subject of a country or place invaded or conquered gives information to his own government, from which he is separated by the hostile army, or to the army of his government, he is a war traitor, and death is the penalty of his offense.

93. All armies in the field stand in need of guides, and impress them if they can not obtain them otherwise.

94. No person having been forced by the enemy to serve as guide is punishable for having done so.

95. If a citizen of a hostile and invaded district voluntarily serves as a guide to the enemy, or offers to do so, he is deemed a war traitor, and shall suffer death.

96. A citizen serving voluntarily as a guide against his own country commits treason, and will be dealt with according to the law of his country.

97. Guides, when it is clearly proved that they have misled intentionally, may be put to death.

98. All unauthorized or secret communication with the enemy is considered treasonable by the law of war.

Foreign residents in an invaded or occupied territory, or foreign visitors in the same, can claim no immunity from this law. They may communicate with foreign parts, or with the inhabitants of the hostile country, so far as the military authority permits, but no further. Instant expulsion from the occupied territory would be the very least punishment for the infraction of this rule.

99. A messenger carrying written dispatches or verbal messages from one portion of the army, or from a besieged place, to another portion of the same army or its government, if armed and in the uniform of

his army, and if captured while doing so in the territory occupied by the enemy, is treated by the captor as a prisoner of war. If not in uniform, nor a soldier, the circumstances connected with his capture must determine the disposition that shall be made of him.

100. A messenger or agent who attempts to steal through the territory occupied by the enemy to further, in any manner, the interests of the enemy, if captured is not entitled to the privileges of the prisoner of war, and may be dealt with according to the circumstances of the case.

101. While deception in war is admitted as a just and necessary means of hostility, and is consistent with honorable warfare, the common law of war allows even capital punishment for clandestine or treacherous attempts to injure an enemy, because they are so dangerous and it is so difficult to guard against them.

102. The law of war, like the criminal law regarding other offenses, makes no difference on account of the difference of sex, concerning the the spy, the war traitor, or the war rebel.

103. Spies, war traitors, and war rebels are not exchanged according to the common law of war. The exchange of such persons would require a special cartel, authorized by the government, or, at a great distance from it, by the chief commander of the army in the field.

104. A successful spy or war traitor, safely returned to his own army, and afterwards captured as an enemy, is not subject to punishment for his acts as a spy or war traitor, but he may be held in closer custody as a person individually dangerous.

## SECTION VI.

### *Exchange of prisoners—Flags of truce<sup>1</sup>—Flags of protection.*

105. Exchanges of prisoners take place, number for number, rank for rank, wounded for wounded, with added condition for added condition, such, for instance, as not to serve for a certain period.

#### <sup>1</sup> FLAGS OF TRUCE.

1. *Dispatch of flag.*—Communication by flag of truce, being an exception to the fundamental rule of nonintercourse between belligerents, is not to be resorted to except by the authority of the President or the commanding general of the army or forces operating against the enemy in the field. No inferior commander is empowered to resort to the use of a flag of truce except by the direction of such authorized superior.

2. The party sent out with a flag of truce should be commanded by a commissioned officer designated for the purpose. His command should consist of such number of noncommissioned officers and soldiers as may be requisite for the purposes of the mission, and no more; the party should be reduced to the least number that may be adequate and reasonable. No military person not a constituent of the party, and no civilian, should be allowed to accompany the flag, except by the express authority of the commander dispatching the same.

3. The officer commanding the party, or bearer proper, should be furnished with specific instructions, in writing if practicable, informing and directing him precisely as to his function and duties. Communications committed to him to be conveyed to the enemy should, if practicable, be in writing.

4. The officer in charge should comply literally and exactly with his instructions, not exceeding them. On approaching the enemy's lines he should exhibit the flag, or white signal employed as such, in time and in such a manner as to prevent his party being fired upon. He should deliver his dispatches, if any, to an officer duly authorized to receive them, should receive and carefully retain such dispatches as may be delivered to him, and, his mission being completed, should return as promptly as possible within his own lines. During his absence he should require his escort to confine themselves to their strict duties, and prohibit their holding any communication, except such as may be absolutely necessary, with the military persons or civilians within the enemy's lines.

5. The officer in charge, on his return, is to make at once to the commander by whose order he was dispatched a full report of the performance of his mission, including his precise communications to the

106. In exchanging prisoners of war, such numbers of persons of inferior rank may be substituted as an equivalent for one of superior rank as may be agreed upon by cartel, which requires the sanction of the Government or of the commander of the army in the field.

107. A prisoner of war is in honor bound truly to state to the captor his rank, and he is not to assume a lower rank than belongs to him, in order to cause a more advantageous exchange, nor a higher rank, for the purpose of obtaining better treatment.

Offenses to the contrary have been justly punished by the commanders of released prisoners, and may be good cause for refusing to release such prisoners.

108. The surplus number of prisoners of war remaining after an exchange has taken place is sometimes released either for the payment of a stipulated sum of money, or, in urgent cases, of provision, clothing, or other necessities.

Such arrangement, however, requires the sanction of the highest authority.

109. The exchange of prisoners of war is an act of convenience to both belligerents. If no general cartel has been concluded it can not be demanded by either of them. No belligerent is obliged to exchange prisoners of war.

enemy and the precise acts and communications of the enemy in reply thereto. He should furnish also a list of all persons, if any, accompanying the flag or returning with it, such as exchanged prisoners, persons authorized to pass the lines, etc., with the fact of their examination and all obtainable particulars of their character and purposes.

6. *Reception of flag.*—By the law of nations, the bearer in good faith of a flag of truce is, with his escort, inviolable. The flag is not to be fired upon, nor the bearer, or persons properly accompanying him, to be made prisoners. They are to be received with respect and treated with courtesy, and at the end of their mission to be allowed to return without impediment. Where unavoidably detained, they will, if necessary, properly be sheltered and subsisted and their animals foraged.

7. But as a flag of truce may be employed as a cover for illegal designs, the party should not be allowed to enter within the outer line of guards or pickets in the absence of express authority from the commander of the forces, and such precautions should be taken as to prevent their making observations or obtaining information.

8. The flag should either be met by another flag on the neutral ground or territory intervening between the hostile lines, or, on its arrival near the outer line, should be halted by the nearest sentinel or vedette and ordered to face in the direction from which it came. The sentinel or vedette will then, through his corporal, communicate the arrival of the flag to the officer in command of the nearest picket post or guard, who will himself proceed, or will send a commissioned or noncommissioned officer, with a small detachment, to meet the flag and ascertain its object, of which he will at once cause information to be transmitted to the chief commander. The commander, if he desires to receive the flag, which, in discretion, he may refuse to do, will thereupon dispatch a commissioned officer, with suitable escort and proper instructions, to formally receive the flag and respond officially to its communications, or to take charge of such dispatches as the bearer may desire to have forwarded to the commander, returning later with the response, if any.

9. Should the officer in charge of the flag insist, in obedience to his instructions, upon a personal interview with the chief commander, the latter may, in his discretion, refuse such interview, or he may proceed to meet the flag in person, or he may cause the bearer to be conducted to his headquarters, or other place appointed, his eyes being bandaged if deemed expedient. But no member of his escort should, except by express authority, be admitted with him within the lines.

10. Where, indeed, the flag is employed as a means of safe conduct for exchanged prisoners, hostages, refugees, or other civilians permitted by proper authority to pass the lines, these may be admitted by the authority of the chief commander, after having been carefully examined to ascertain if they have in their possession supplies or merchandise. They should be allowed to bring in with them only necessary personal effects.

11. Until the purpose of a flag of truce is accomplished and the party returns, the bearer and those accompanying him (except so far as admitted by authority within the lines) will remain halted in the same or other appointed place, in the presence of an adequate guard, or, if unusual delay be involved, may be allowed to make camp, under proper observation. During their stay no conversation should be held with them on any subject directly or indirectly relating to military or public affairs, and the guard attending them should be accompanied by a commissioned or noncommissioned officer to insure the observance of this precaution.

12. Should the officer in charge of the flag, or any of his escort, be detected in an attempt to obtain illicit information, or in any other form of abuse of the privilege of the flag, or should there arise a reasonable ground of suspicion that the flag has not been dispatched, or is not being employed, in good faith, the bearer and those implicated may be detained for investigation and punishment according to the laws of war. (G. O., No. 43, Headquarters of the Army, May 20, 1893.)

A cartel is voidable as soon as either party has violated it.

110. No exchange of prisoners shall be made except after complete capture, and after an accurate account of them, and a list of the captured officers has been taken.

111. The bearer of a flag of truce can not insist upon being admitted. He must always be admitted with great caution. Unnecessary frequency is carefully to be avoided.

112. If the bearer of a flag of truce offer himself during an engagement, he can be admitted as a very rare exception only. It is no breach of good faith to retain such flag of truce, if admitted during the engagement. Firing is not required to cease on the appearance of a flag of truce in battle.

113. If the bearer of a flag of truce, presenting himself during an engagement, is killed or wounded, it furnishes no ground of complaint whatever.

114. If it be discovered, and fairly proved, that a flag of truce has been abused for surreptitiously obtaining military knowledge, the bearer of the flag thus abusing his sacred character is deemed a spy.

So sacred is the character of a flag of truce, and so necessary is its sacredness, that while its abuse is an especially heinous offense, great caution is requisite, on the other hand, in convicting the bearer of a flag of truce as a spy.

115. It is customary to designate by certain flags (usually yellow) the hospitals in places which are shelled, so that the besieging enemy may avoid firing on them. The same has been done in battles when hospitals are situated within the field of the engagement.

116. Honorable belligerents often request that the hospitals within the territory of the enemy may be designated, so that they may be spared.

An honorable belligerent allows himself to be guided by flags or signals of protection as much as the contingencies and the necessities of the fight will permit.

117. It is justly considered an act of bad faith, of infamy or fiendishness, to deceive the enemy by flags of protection. Such act of bad faith may be good cause for refusing to respect such flags.

118. The besieging belligerent has sometimes requested the besieged to designate the buildings containing collections of works of art, scientific museums, astronomical observatories, or precious libraries, so that their destruction may be avoided as much as possible.

## SECTION VII.

### *The parole.*

119. Prisoners of war may be released from captivity by exchange, and, under certain circumstances, also by parole.

120. The term parole designates the pledge of individual good faith and honor to do, or to omit doing, certain acts after he who gives his

parole shall have been dismissed, wholly or partially, from the power of the captor.

121. The pledge of the parole is always an individual, but not a private act.

122. The parole applies chiefly to prisoners of war whom the captor allows to return to their country or to live in greater freedom within the captor's country or territory on conditions stated in the parole.

123. Release of prisoners of war by exchange is the general rule; release by parole is the exception.

124. Breaking the parole is punished with death when the person breaking the parole is captured again.

Accurate lists, therefore, of the paroled persons must be kept by the belligerents.

125. When paroles are given and received there must be an exchange of two written documents, in which the name and rank of the paroled individuals are accurately and truthfully stated.

126. Commissioned officers only are allowed to give their parole, and they can give it only with the permission of their superior, as long as a superior in rank is within reach.

127. No noncommissioned officer or private can give his parole except through an officer. Individual paroles not given through an officer are not only void, but subject the individuals giving them to the punishment of death as deserters. The only admissible exception is where individuals, properly separated from their commands, have suffered long confinement without the possibility of being paroled through an officer.

128. No paroling on the battlefield, no paroling of entire bodies of troops after a battle, and no dismissal of large numbers of prisoners, with a general declaration that they are paroled, is permitted or of any value.

129. In capitulations for the surrender of strong places or fortified camps the commanding officer, in cases of urgent necessity, may agree that the troops under his command shall not fight again during the war unless exchanged.

130. The usual pledge given in the parole is not to serve during the existing war unless exchanged.

This pledge refers only to the active service in the field, against the paroling belligerent or his allies actively engaged in the same war. These cases of breaking the parole are patent acts, and can be visited with the punishment of death; but the pledge does not refer to internal service, such as recruiting or drilling the recruits, fortifying places not besieged, quelling civil commotions, fighting against belligerents unconnected with the paroling belligerents, or to civil or diplomatic service for which the paroled officer may be employed.

131. If the Government does not approve of the parole, the paroled officer must return into captivity, and should the enemy refuse to receive him, he is free of his parole.

132. A belligerent government may declare, by a general order, whether it will allow paroling, and on what conditions it will allow it. Such order is communicated to the enemy.

133. No prisoner of war can be forced by the hostile government to parole himself, and no government is obliged to parole prisoners of war or to parole all captured officers if it paroles any. As the pledging of the parole is an individual act, so is paroling, on the other hand, an act of choice on the part of the belligerent.

134. The commander of an occupying army may require of the civil officers of the enemy, and of its citizens, any pledge he may consider necessary for the safety or security of his army, and upon their failure to give it he may arrest, confine, or detain them.

#### SECTION VIII.

##### *Armistice—Capitulation.*

135. An armistice is the cessation of active hostilities for a period agreed between belligerents. It must be agreed upon in writing, and duly ratified by the highest authorities of the contending parties.

136. If an armistice be declared, without conditions, it extends no further than to require a total cessation of hostilities along the front of both belligerents.

If conditions be agreed upon, they should be clearly expressed, and must be rigidly adhered to by both parties. If either party violates any express condition, the armistice may be declared null and void by the other.

137. An armistice may be general, and valid for all points and lines of the belligerents, or special, that is, referring to certain troops or certain localities only.

An armistice may be concluded for a definite time or for an indefinite time, during which either belligerent may resume hostilities on giving the notice agreed upon to the other.

138. The motives which induce the one or the other belligerent to conclude an armistice, whether it be expected to be preliminary to a treaty of peace or to prepare during the armistice for a more vigorous prosecution of the war, does in no way affect the character of the armistice itself.

139. An armistice is binding upon the belligerents from the day of the agreed commencement; but the officers of the armies are responsible from the day only when they receive official information of its existence.

140. Commanding officers have the right to conclude armistices binding on the district over which their command extends, but such armistice is subject to the ratification of the superior authority, and ceases so soon as it is made known to the enemy that the armistice is not ratified, even if a certain time for the elapsing between giving notice of cessation and the resumption of hostilities should have been stipulated for.

141. It is incumbent upon the contracting parties of an armistice to stipulate what intercourse of persons or traffic between the inhabitants of the territories occupied by the hostile armies shall be allowed, if any. If nothing is stipulated, the intercourse remains suspended, as during actual hostilities.

142. An armistice is not a partial or a temporary peace; it is only the suspension of military operations to the extent agreed upon by the parties.

143. When an armistice is concluded between a fortified place and the army besieging it, it is agreed by all the authorities on this subject that the besieger must cease all extension, perfection, or advance of his attacking works as much so as from attacks by main force.

But as there is a difference of opinion among martial jurists whether the besieged have the right to repair breaches or to erect new works of defense within the place during an armistice, this point should be determined by express agreement between the parties.

144. So soon as a capitulation is signed, the capitulator has no right to demolish, destroy, or injure the works, arms, stores, or ammunition in his possession during the time which elapses between the signing and the execution of the capitulation, unless otherwise stipulated in the same.

145. When an armistice is clearly broken by one of the parties, the other party is released from all obligation to observe it.

146. Prisoners taken in the act of breaking an armistice must be treated as prisoners of war, the officer alone being responsible who gives the order for such a violation of an armistice. The highest authority of the belligerent aggrieved may demand redress for the infraction of an armistice.

147. Belligerents sometimes conclude an armistice while their plenipotentiaries are met to discuss the conditions of a treaty of peace; but plenipotentiaries may meet without a preliminary armistice; in the latter case, the war is carried on without any abatement.

#### SECTION IX.

##### *Assassination.*

148. The law of war does not allow proclaiming either an individual belonging to the hostile army or a citizen or a subject of the hostile government an outlaw who may be slain without trial by any captor, any more than the modern law of peace allows such intentional outlawry; on the contrary, it abhors such outrage. The sternest retaliation should follow the murder committed in consequence of such proclamation, made by whatever authority. Civilized nations look with horror upon offers of rewards for the assassination of enemies as relapses into barbarism.



## SECTION X.

*Insurrection—Civil war—Rebellion.*

149. Insurrection is the rising of people in arms against their government or a portion of it, or against one or more of its laws, or against an officer or officers of the government. It may be confined to mere armed resistance, or it may have greater ends in view.

150. Civil war is war between two or more portions of a country or state, each contending for the mastery of the whole, and each claiming to be the legitimate government. The term is also sometimes applied to war of rebellion, when the rebellious provinces or portions of the state are contiguous to those containing the seat of government.

151. The term rebellion is applied to an insurrection of large extent, and is usually a war between the legitimate government of a country and portions of provinces of the same who seek to throw off their allegiance to it and set up a government of their own.

152. When humanity induces the adoption of the rules of regular war toward rebels, whether the adoption is partial or entire, it does in no way whatever imply a partial or complete acknowledgment of their government, if they have set up one, or of them as an independent or sovereign power. Neutrals have no right to make the adoption of the rules of war by the assailed government toward rebels the ground of their own acknowledgment of the revolted people as an independent power.

153. Treating captured rebels as prisoners of war, exchanging them, concluding of cartels, capitulations, or other warlike agreements with them, addressing officers of a rebel army by the rank they may have in the same, accepting flags of truce, or, on the other hand, proclaiming martial law in their territory, or levying war taxes or forced loans, or doing any other act sanctioned or demanded by the law and usages of public war between sovereign belligerents, neither proves nor establishes an acknowledgment of the rebellious people, or of the government which they may have erected, as a public or sovereign power. Nor does the adoption of the rules of war toward rebels imply an engagement with them extending beyond the limits of these rules. It is victory in the field that ends the strife and settles the future relations between the contending parties.

154. Treating, in the field, the rebellious enemy according to the law and usages of war has never prevented the legitimate government from trying the leaders of the rebellion or chief rebels for high treason, and from treating them accordingly, unless they are included in a general amnesty.

155. All enemies in regular war are divided into two general classes—that is to say, into combatants and noncombatants, or unarmed citizens of the hostile government.

The military commander of the legitimate government, in a war of

rebellion, distinguishes between the loyal citizen in the revolted portion of the country and the disloyal citizen. The disloyal citizen may further be classified into those citizens known to sympathize with the rebellion without positively aiding it, and those who, without taking up arms, give positive aid and comfort to the rebellious enemy without being bodily forced thereto.

156. Common justice and plain expediency require that the military commander protect the manifestly loyal citizens in revolted territories against the hardships of the war as much as the common misfortune of all war admits.

The commander will throw the burden of the war, as much as lies within his power, on the disloyal citizens of the revolted portion or province, subjecting them to a stricter police than the noncombatant enemies have to suffer in regular war; and if he deems it appropriate, or if his government demands of him that every citizen shall, by an oath of allegiance or by some other manifest act, declare his fidelity to the legitimate government, he may expel, transfer, imprison, or fine the revolted citizens who refuse to pledge themselves anew as citizens obedient to the law and loyal to the government.

Whether it is expedient to do so, and whether reliance can be placed upon such oaths, the commander or his government have the right to decide.

157. Armed or unarmed resistance by citizens of the United States against the lawful movements of their troops is levying war against the United States, and is therefore treason.



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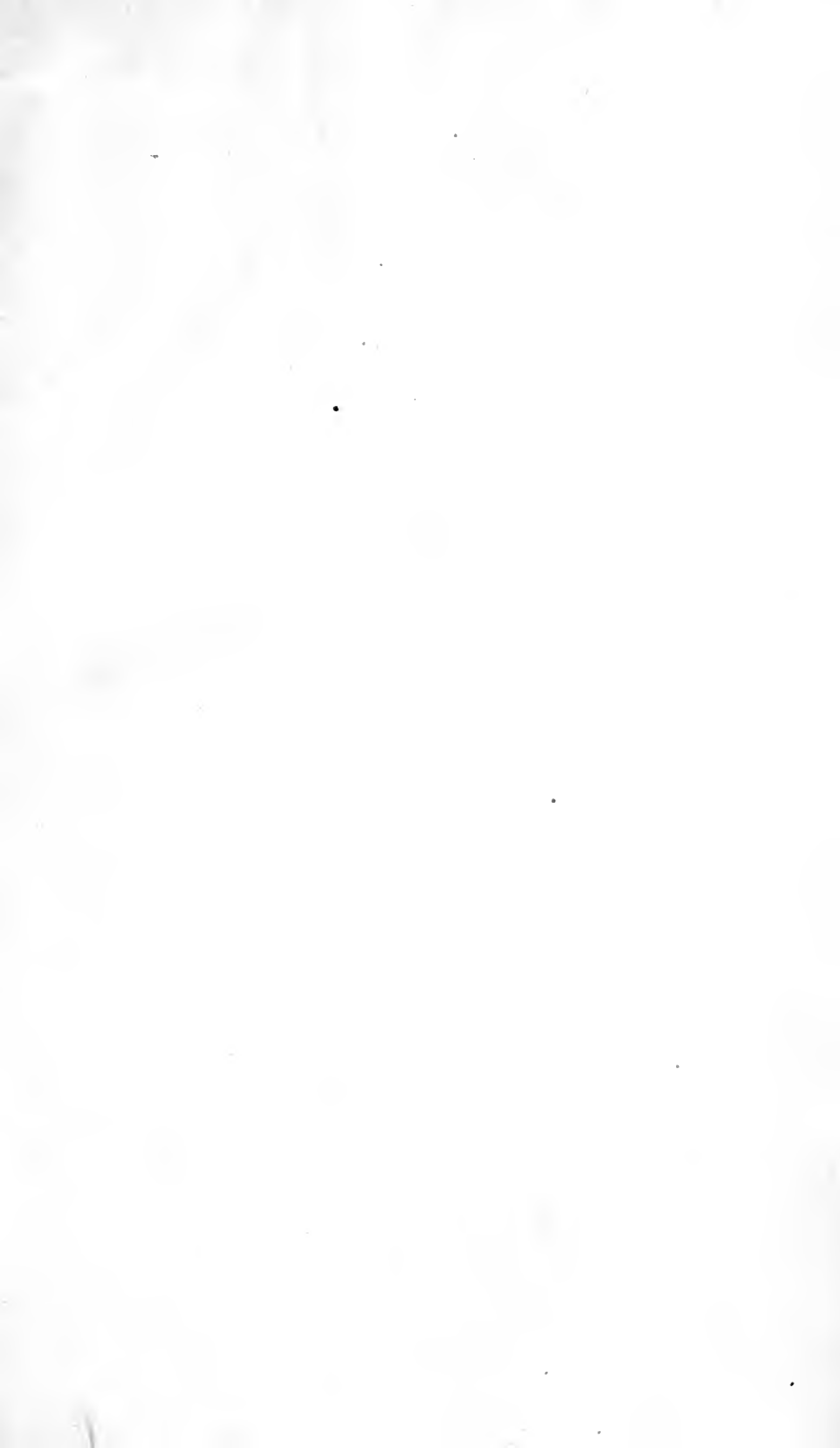
















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